

APPEAL NO. 033103  
FILED JANUARY 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 5, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 20th quarter and, had she been entitled to SIBs, the respondent (carrier) would be relieved from liability for SIBs from July 10 through July 22, 2003, due to the claimant's failure to timely file an Application for [SIBs] (TWCC-52). The claimant appeals these determinations. The carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his or her ability to work. At issue in this case is whether the claimant satisfied the good faith requirement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5)), relied upon by the claimant for SIBs entitlement, provides that the good faith requirement may be satisfied if the claimant "has provided sufficient documentation as described in subsection (e)." Rule 130.102(e) states that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." The rule then lists information to be considered in determining whether the injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which document the job search, the amount of time spent in attempting to find employment, and any job search plan.

Whether a claimant satisfied the good faith requirement for SIBs entitlement was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). Despite the fact that the claimant documented more than the minimum job search efforts required by the rule, the hearing officer was not persuaded that her efforts were made in good faith and concluded that she is not entitled to SIBs. We cannot agree, as the claimant asserts on appeal, that the hearing officer held her to a "higher standard" than that required under the rules for SIBs entitlement. Nothing in our review of the record indicates that the hearing officer's SIBs determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Although the claimant contends on appeal that she was “enrolled in the Texas Rehabilitation Commission [TRC],” the claimant actually testified that she simply contacted them one time during the qualifying period. There is no evidence that the claimant was enrolled in and satisfactorily participating in a vocational rehabilitation program sponsored by the TRC as proved for in Rule 130.102(d)(2). The claimant also argues that the carrier had paid the eight SIBs quarters prior to the 20th quarter and, therefore, should not have pursued a dispute without a factual or legal basis for doing so. Rule 130.108(a) instructs that a carrier shall not pursue a dispute of SIBs without a factual or legal basis and that it must consider a comparison between the factual situation of the previous qualifying period with the factual situation of the current qualifying period. There was no issue related to this point at the hearing. Even if there were, we would note that the "factual situation" for the 20th quarter qualifying period could be considered to be different from the prior eight quarters in that the claimant apparently duplicated essentially the same job search efforts, which had not resulted in obtaining employment in the prior quarters.

Because we have affirmed the determination that the claimant is not entitled to SIBs for the 20th quarter, we will not address the issue of whether the carrier would have been relieved from liability due to the claimant’s failure to timely file a TWCC-52.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge