

APPEAL NO. 033144
FILED JANUARY 13, 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 19, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth quarter. The claimant appeals this determination and asserts that the hearing officer failed to consider all of the evidence supporting his position. The respondent (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 he 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). The hearing officer explained in her decision that the claimant made minimal job contacts, the majority of which were made by phone to employers who were not hiring. The hearing officer found that the claimant did not conduct a "well-structured job search plan" and found that he was not entitled to SIBs. Nothing in our review of the record indicates that the hearing officer's decision 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). Additionally, we find no support for the claimant's assertion that the hearing officer failed to consider all of the job search efforts made by the claimant. In fact, the efforts specifically pointed out by the claimant on appeal (contacting the Texas Rehabilitation Commission and Veterans

Outreach Program) are identified and discussed in the hearing officer's Statement of the Evidence.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge