

APPEAL NO. 033254
FILED FEBRUARY 5, 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 17, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 12th quarter (June 14 through September 12, 2003). The appellant (carrier) appealed the determination of entitlement, disputing the determination that the claimant made good faith efforts to seek employment commensurate with his ability to work during the qualifying period. The claimant responded, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the carrier accepted liability for the _____, injury to the claimant; that the claimant had an impairment rating of 15% or greater from the _____ injury; that the claimant did not elect to commute impairment income benefits; and that the 12th SIBs quarter is from June 14 through September 12, 2003. The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the 12th quarter qualifying period.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. Rule 130.102(d)(5) which was also 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 the claimant satisfied the good faith requirements of either Rule 130.102(d)(2) or Rule 130.102(d)(5) was a factual question for the hearing officer to resolve. The hearing officer found that the claimant had some ability to work; that he looked for work in each week of the qualifying period for the 12th quarter; that pursuant to an individualized plan for employment, the claimant enrolled in and attended a

session of school during the qualifying period, and that the claimant satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. The hearing officer concluded that the claimant was entitled to SIBs for the 12th quarter. 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 and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

According to information provided by the carrier, the true corporate name of the insurance carrier is **FARMINGTON CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge