

APPEAL NO. 033277
FILED JANUARY 26, 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 25, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 9th quarter, April 30 through July 29, 2003, or for the 10th quarter, July 30 through October 28, 2003. The claimant appealed each and every finding of fact and conclusion of law rendered against the claimant. The respondent (carrier) 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 qualifying periods for the 9th and 10th quarters were from January 16 through July 16, 2003; that the claimant reached maximum medical improvement on January 4, 2000, with a 23% impairment rating; and that impairment income benefits were not commuted.

At issue in this case is whether the claimant satisfied the good faith criteria for SIBs entitlement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), relied upon by the claimant in this case, states that the "good faith" criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

Alternatively, 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)(4) or Rule 130.102(d)(5) was a factual question for the hearing officer to resolve. The hearing officer noted that the claimant failed to prove that he had no ability to work in both the 9th and 10th quarter qualifying periods; that he failed to provide a narrative report which specifically explained how his compensable injury caused a total inability to work; that the functional capacity evaluation in evidence indicated that the claimant could work in a sedentary capacity six to eight hours a day; that he failed to document a job search during each week of the 10th quarter qualifying period; and that although he documented a job search during each week of the 9th quarter qualifying period, the claimant did not conduct a well-structured job search plan and did not make a good faith effort to obtain employment commensurate with his ability to work in either the 9th or the 10th quarter qualifying period. The hearing officer concluded that the claimant was not entitled to SIBs for the 9th and 10th quarters. 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, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**MR. RUSSELL OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge