

APPEAL NO. 033281  
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 December 4, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 11th quarter. The claimant appeals this determination. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

We note at the outset that the claimant attached documents to her appeal, but apparently the documents were not attached to the copy of the appeal sent to the carrier. The carrier was not able to determine whether these documents constituted new evidence, but argued in its appeal that if it were new evidence, it should not be considered. We have reviewed the documents attached to the claimant's appeal and have determined that they are duplicates of the evidence offered at the hearing and do not constitute new evidence.

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)(4) (Rule 130.102(d)(4)), relied on, in part, by the claimant for SIBs entitlement, 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. Rule 130.102(d)(5), also relied upon by the claimant for 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 did not provide a narrative complying with the requirements of Rule 130.102(d)(4) and that there were records in evidence indicating that the claimant could work in a restricted capacity as of May 13, 2003. The hearing officer also determined that the claimant did not conduct a “well-structured job search plan” and concluded that the claimant was not entitled to SIBs for the 11th 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 or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant argues, for the first time on appeal, that she was supplied with incorrect dates for the qualifying period corresponding to the 11th quarter and, as a result, was “placed at a disadvantage.” The claimant does not explain how the incorrect dates caused a disadvantage and because she did not argue this at the hearing, we are not required to address her complaint on appeal. However, we would point out that the claimant’s testimony was that she did not look for work prior to June 16, 2003, because she only became aware of the existence of a record indicating that she had an ability to work on June 15, 2003. The evidence reflects that she then looked for work during each remaining week of the correct qualifying period. Because of this, we fail to see how the claimant could have been negatively impacted by learning of the correct beginning date of the period, which was approximately four weeks prior to the date initially provided, as, based on her testimony, she would not have looked for work prior to June 16, 2003, regardless of the dates supplied on the SIBs application.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **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 STREET, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701-2554.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Edward Vilano  
Appeals Judge