

APPEAL NO. 033303
FILED FEBRUARY 17, 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 2, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third and fourth quarters. The claimant has submitted a statement which simply says: "This is to file an appeal with the Appeals Clerk, Hearings." In accordance with past practice, we will treat this as an appeal of the sufficiency of the evidence. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed as reformed.

We reform Finding of Fact No. 6 by adding the word "not" so that the finding reads: "The Claimant did not make a good faith effort to seek employment during the qualifying periods for the 3rd and 4th quarters." This corrects an obvious administrative oversight.

The hearing officer determined that the claimant did not make a good faith effort to look for work commensurate with his ability to work in the qualifying periods for the third and fourth quarters of SIBs. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5)) 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 provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) of Rule 130.102 provides, in relevant part, 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 issue of whether the claimant made a good faith job search in the qualifying periods for the third and fourth quarters was a question of fact for the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviews the evidence before her and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Simply put, the hearing officer did not believe that the claimant was seeking work within his restrictions, or that he had a job search plan that would actually result in getting a job, as opposed to merely completing the forms to qualify for SIBs. Considering his efforts as a whole, the

hearing officer was not persuaded that the claimant demonstrated that he made a good faith effort to look for work in the qualifying periods. Nothing in our review of the record demonstrates that that determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's good faith determination, or the determination that the claimant is not entitled to SIBs for the third and fourth quarters, on appeal. Cain, *supra*.

Although arguments were also made that the claimant was entitled to SIBs through both participation in a vocational rehabilitation program with the Texas Rehabilitation Commission pursuant to Rule 130.102(d)(2), and as a result of having a total inability to work pursuant to Rule 130.102(d)(4), the hearing officer's rejection of those theories of entitlement is supported by sufficient evidence.

We affirm the decision and order of the hearing officer, as reformed.

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

**ROBIN MOUNTAIN
ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge