

APPEAL NO. 033353
FILED FEBRUARY 23, 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 respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 5th quarter. The appellant (carrier) appeals on evidentiary grounds. No response was filed.

DECISION

Reversed and rendered.

The hearing officer erred in determining that the claimant is entitled to 5th quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue in this case is whether the claimant made a good faith job search commensurate with his ability to work during the 5th quarter qualifying period. Rule 130.102(e) provides that an injured employee 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 hearing officer considered the evidence and found that the "documentation of attempts to locate employment during the qualifying period for the 5th quarter of [SIBs] show that he has made a good faith effort to obtain employment within his abilities." Our review of the evidence, however, reveals that the claimant did not document a job search during the 10th, 11th, and 12th weeks of the qualifying period. The hearing officer's determination 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). Accordingly, we reverse the hearing officer's decision and render a new decision that the claimant is not entitled to 5th quarter SIBs.

For the reasons set forth above, we reverse the hearing officer's decision and order and render a new decision that the claimant is not entitled to 5th quarter SIBs.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge