

APPEAL NO. 040122
FILED MARCH 3, 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 31, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 16th quarter. The appellant (carrier) appeals this determination. The appeal file contains no response from the claimant.

DECISION

Affirmed.

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 met the good faith requirement of Section 408.142(a)(4) by complying with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)), which 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 returned to work in a position which is relatively equal to the injured employee's ability to work. A claimant is not required to work in his or her position during each week of the qualifying period or otherwise document a job search in those weeks the claimant did not work, in order to satisfy the good faith requirement. Texas Workers' Compensation Commission Appeal No. 001579, decided August 17, 2000. Additionally, compliance with only one subsection of Rule 130.102(d), in this case the return to work provision, will establish good faith. See Texas Workers' Compensation Commission Appeal No. 001099, decided June 21, 2000.

Whether the claimant satisfied the good faith requirement 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 was persuaded by the evidence that, during the 16th quarter qualifying period, the claimant returned to work in a position relatively equal to her ability to work. Nothing in our review of the record indicates that the hearing officer's decision that the claimant is entitled to 16th quarter SIBs 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 decision and order of the hearing officer are affirmed.

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

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

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge