

APPEAL NO. 040228  
FILED MARCH 18, 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 January 14, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appeals "each and every findings of fact and conclusion of law decided by the Hearing [Officer] that is against the claimant." The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant's appeal states "The claimant proved beyond the preponderance of the evidence that he has no ability to work." Our review of the evidence does not indicate that there was any evidence at all, nor was there any assertion made at the hearing, that the claimant was unable to perform any work. In fact, the entire thrust of his testimony and the documentary evidence submitted on his behalf was that the claimant looked for work that he could do, considering his injuries.

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 hearing officer determined that the claimant did not look for work every week of the qualifying period, and therefore he did not make a good faith effort to look for work commensurate with his ability to work.

The issue of whether the claimant made a good faith job search in the qualifying period for the second quarter 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. 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 second quarter, on appeal. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, COMMODORE 1, SUITE 750  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge