

APPEAL NO. 040351
FILED MARCH 26, 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 21, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th quarter. The claimant appealed on sufficiency of the evidence grounds and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he received an impairment rating of 16%; that he did not commute his impairment income benefits; and that the qualifying period for the 10th quarter ran from August 2 to October 31, 2003. The 10th quarter ran from November 14, 2003, to February 12, 2004. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by showing that he had a total inability to work during the qualifying period for the 10th quarter. Rule 130.102(d)(4) 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 been unable to perform any type of work in any capacity, has provided a narrative 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.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement of Rule 130.102(d)(4) by demonstrating that he had no ability to work in the relevant qualifying period. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4). Specifically, the hearing officer stated in her decision that the claimant's treating doctor has not specifically explained how the claimant's injury caused a total inability to work and that other records showed that the claimant had some ability to work in the qualifying period. The hearing officer additionally found that during the relevant qualifying period, the claimant was not enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission, and that he did not conduct a job search every week of the qualifying period in question. (See requirements of Rule 130.102(e)). Nothing in our review of the record reveals that the hearing officer's determinations in that regard are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith determination, or the

determination that the claimant is not entitled to SIBs for the 10th quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order 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.**

Daniel R. Barry
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge