

APPEAL NO. 040710
FILED MAY 24, 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 March 8, 2004. With respect to the issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter. In his appeal, the claimant asserts error in that determination. The appeal file does not contain a response to the claimant's appeal from the respondent (carrier).

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he received an impairment rating of 21%; and that the qualifying period for the fifth quarter of SIBs ran from July 24 through October 22, 2003. 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) either by showing that he had a total inability to work during the qualifying period or by making a good faith effort to look for work commensurate with his ability to work. 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 qualifying period for the fifth quarter. 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). 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 determination that the claimant did not satisfy the good faith requirement under Rule 130.102(d)(4), or the determination that the claimant is not entitled to SIBs for the fifth quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer also did not err in determining that the claimant did not satisfy the good faith requirement by demonstrating that he made a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying period. The hearing officer determined that the claimant did not look for work in each week of the qualifying period for the fifth quarter and indeed the evidence in the record

demonstrates that no job searches are documented in week seven, more specifically the period from September 4 through September 10, 2003. Accordingly, the hearing officer did not err in determining that the claimant did not satisfy the good faith requirement under Rule 130.102(e), which specifically requires 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.” There are simply no exceptions listed to this requirement and, as such, we find no merit in the assertion that the hearing officer erred in imposing a requirement that is plainly established in Rule 130.102(e).

Finally, the claimant asserted that Rule 130.102(e) requiring the claimant to search for work every week of the qualifying period is “outside the authority of the [Texas Workers' Compensation Commission (Commission)] to promulgate” and further states that he “disagrees with the interpretation of the rule given by the Appeals Panel.” We note that we are without the authority to consider and resolve challenges to the validity of the Commission’s rules. Such questions are matters for the courts to consider. Texas Workers Compensation Commission Appeal No. 001607, decided August 21, 2000. Accordingly, we decline to address this matter on appeal. In addition, we decline to reconsider our interpretation that the phrase “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” actually requires a documented job search in every week of the qualifying period. Indeed, the meaning of that phrase appears evident and does not seem subject to interpretation.

The hearing officer's decision and order are affirmed.

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

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge