

APPEAL NO. 040915  
FILED JUNE 10, 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 24, 2004. With respect to the issues before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth, sixth, and seventh quarters. In his appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that he reached maximum medical improvement on February 21, 2001, with an impairment rating of 22%; that the claimant did not commute his impairment income benefits; that the fifth quarter of SIBs ran from May 29 through August 27, 2003, with a corresponding qualifying period of February 14 through May 15, 2003; that the sixth quarter of SIBs ran from August 28 through November 26, 2003, with a corresponding qualifying period of May 16 through August 14, 2003; and that the seventh quarter of SIBs ran from November 27, 2003, through February 25, 2004, with a corresponding qualifying period of August 15 through November 13, 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 periods 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 report 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 periods. 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 determined that the claimant did not present a narrative report from a doctor that explained how the compensable injury caused a total inability to work and that other records show that the claimant had an ability to work. 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) in any of the relevant qualifying periods, or the determination that the claimant is not entitled to SIBs for the fifth, sixth, and seventh quarters, 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 qualifying periods. The hearing officer noted that the claimant "truly believed that he had no ability to work" in the qualifying periods and that "the documented job searches were, therefore, designed to connect the dots to entitlement to [SIBs] and not to identify, apply for, and secure employment." The hearing officer was acting within his province as the fact finder in so finding. And, as such, he did not err in determining that the claimant's job search efforts were not undertaken in good faith in accordance with Rule 130.102(e). The hearing officer's determination that the claimant did not conduct a good faith job search in any of the qualifying periods at issue is not so against the great weight of the evidence as to compel its reversal on appeal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Margaret L. Turner  
Appeals Judge