

APPEAL NO. 041160
FILED JUNE 30, 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 scheduled for February 5, 2004. The appellant (claimant) did not appear at the hearing and a 10-day show cause letter was sent to the claimant. The claimant contacted the Texas Workers' Compensation Commission (Commission) after that letter, without specifically responding to the letter. In response to the claimant's contact with the Commission, the hearing officer, reset the hearing for April 21, 2004. The claimant again did not appear in person; however, her attorney was present, as was the carrier's attorney. The hearing officer admitted the claimant's exhibits and closed the record, without either party making an argument. With respect to the single issue before him, the hearing officer determined that the claimant was not entitled to supplemental income benefits (SIBs) for the 14th quarter, which ran from October 9, 2003, through January 7, 2004. In her appeal, the claimant argues that the determinations that she did not satisfy the good faith requirement in the qualifying period for the 14th quarter and that she is not entitled to SIBs for the 14th quarter are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____; that she was assigned an impairment rating of 15% or more; that she did not commute her impairment income benefits; and that the qualifying period for the 14th quarter of SIBs ran from June 27 through September 25, 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 she returned to work in a job relatively equal to her ability to work or by making a good faith effort to look for work commensurate with her ability to work in the 14th quarter qualifying period. Rule 130.102(d)(1) 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 relatively equal to the injured employee's ability 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)(1) by demonstrating that she had returned to work in a job relatively equal to her ability to work. In this instance, the record reflects that the claimant worked part time in the weeks ending September 19, 2003, and September 26, 2003. However, the record does not contain evidence demonstrating that the claimant was limited to part-time work. As such, the hearing officer did not err in making his implied determination that the claimant's return to work was not a return to work in a position relatively equal to her ability to work. See Texas Workers'

Compensation Commission Appeal No. 022805, decided December 17, 2002. Accordingly, no sound basis exists for us to disturb the hearing officer's determination that the claimant is not entitled to SIBs for the 14th quarter, on appeal.

The hearing officer also did not err in determining that the claimant did not satisfy the good faith requirement by demonstrating that she conducted a good faith job search during the qualifying period for the 14th quarter. The only evidence of the claimant's job search efforts was a document that identified job searches, which were not dated. Thus, as the hearing officer noted, that evidence wholly fails to prove that the claimant looked for work in each week of the qualifying period as is required in Rule 130.102(e). Thus, the hearing officer did not err in determining that the claimant did not satisfy the good faith requirement under that rule.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge