

APPEAL NO. 041220
FILED JULY 7, 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 May 5, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals, contending that he is entitled to SIBs for the first quarter. The respondent (carrier) responded, urging affirmance of the hearing officer's determination.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on February 12, 2003, with a 16% impairment rating; that he has not commuted any portion of his impairment income benefits; that the first quarter of SIBs began on January 15 and continued through April 14, 2004; and that the qualifying period for the first quarter of SIBs began on October 3, 2003, and continued through January 1, 2004.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue in this case was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work by enrolling in, and satisfactorily participating in, a full-time vocational program sponsored by the Texas Rehabilitation Commission (TRC) pursuant to Rule 130.102(d)(2), or by searching for employment every week of the qualifying periods in dispute pursuant to Rule 130.102(e).

Rule 130.102(d)(2) 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 enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. The claimant argues that during the first quarter qualifying period, he was meeting with the TRC to get tested for a retraining program. The hearing officer was not persuaded that the claimant met the requirements of Rule 130.102(d)(2).

Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, 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 claimant argues that he made a good faith effort to look for employment that was within his restrictions every week of the qualifying period.

Whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period in dispute was a fact question for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision that the claimant is not entitled to the first quarter of SIBs is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge