

APPEAL NO. 041404
FILED AUGUST 2, 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 (CCH) was held on May 17, 2004. The hearing officer determined the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth, sixth, and seventh quarters. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant attaches several documents to his appeal some of which were offered and admitted at the CCH, and the other documents were submitted for the first time on appeal. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. We conclude that these attachments to the claimant's appeal do not meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the documents, we conclude that its admission on remand would not have resulted in a different decision. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case is whether the claimant's efforts constituted a good faith effort to obtain employment commensurate with his ability to work. Section 408.142(a)(4). Rule 130.102(d) and (e) set out the ways that an employee can demonstrate a good faith effort to obtain employment commensurate with the ability to work.

The pertinent provisions of Rule 130.102(d) and (e) are:

(d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

* * * *

(2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission [TRC] during the qualifying period;

* * * *

- (4) 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; or
- (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

(e) Job Search Efforts and Evaluation of Good Faith Effort. [A]n 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.

Although the claimant testified, and it is relatively undisputed, that he had some contact with the TRC around the time of the qualifying periods in dispute there was no evidence that the claimant was enrolled in, and satisfactorily participating in, a full-time vocational rehabilitation program sponsored by the TRC. The claimant clearly had not met the provisions of Rule 130.102(d)(2).

The claimant contends that due to his compensable injury he was unable to work during the qualifying periods in dispute. Rule 130.102(d)(4) requires a narrative which specifically explains how the compensable injury causes a total inability to work in any capacity. The hearing officer was persuaded that the evidence established that the claimant had some ability to work during the qualifying periods in dispute.

The claimant testified that he looked for work during the fifth quarter qualifying period of SIBs, but did not look for employment during the sixth and seventh quarter qualifying periods of SIBs. Rule 130.102(e) requires the claimant to document a job search effort in each week of the qualifying period. The hearing officer commented in the Background Information that the claimant documented job searches for every week of the qualifying period for the fifth quarter of SIBs, but that the claimant was “not forthcoming” about his job search record keeping. The hearing officer commented that he did not find the claimant credible. The hearing officer found that the claimant did not attempt, in good faith, to obtain employment commensurate with his ability to work during the relevant qualifying period.

Finally, the claimant asserts on appeal that he has trusted the insurance company and doctors with regard to his case and that he did not have any help by an attorney with regard to his case. Our review of the record indicates that the claimant was adequately apprised of his right to be represented by an attorney, and he chose to proceed without one. As such, any argument or point of error the claimant may have had in this regard has been waived.

We have reviewed the complained-of determinations and conclude that the hearing officer's SIBs determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CASUALTY RECIPROCAL EXCHANGE** and the name and address of its registered agent for service of process is

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Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge