

APPEAL NO. 990959

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 April 2, 1999. The single issue at the CCH was whether the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the fourth compensable quarter, the filing period for which ran from October 24, 1998, through January 22, 1999. The hearing officer determined that the claimant was entitled to SIBS for the quarter in issue and the appellant (carrier) appeals a number of the hearing officer's findings of fact supporting the award of SIBS. Carrier asserts that the findings are supported by no evidence or, alternatively, that they are against the great weight and preponderance of the evidence. No response has been filed.

DECISION

Affirmed.

The claimant sustained a serious crushing injury to his left hand and wrist on \_\_\_\_\_, underwent surgery, reached maximum medical improvement on October 13, 1995, and was assessed a 44% impairment rating. According to the claimant he continues to have pain and numbness in his left hand and wrist and that he is not able to use his hand. Medical records tend to support the claimant's stated condition of the left hand and wrist. During the filing period, the claimant was employed by the restaurant referred to as employer. He stated that, because he could not use his left hand, they agreed to work with him and have someone on duty with him when he was scheduled to work. The claimant worked all but six weeks of the filing period and states that he was only off work for two days as a result of an automobile accident and was off most of the other time because of scheduling problems when there was no one else on duty. He stated he tried but was not able to handle the job by himself. Medical records introduced by the carrier show that the claimant was treated for several other matters during the filing period and that following his automobile accident during Thanksgiving, he was not released to work until December 28, 1998. Also in evidence was a computer entry apparently from a claims examiner dated February 8, 1999, which stated that the employer had been contacted and indicated that the November pay period (missed three checks) was due to the employee not remembering his schedule, that they thought he had quit and that two pay periods in December were due to the automobile accident. The claimant remained on a part-time basis.

While the claimant's testimony was somewhat confusing, it is apparent the hearing officer found it credible and that it established both that the claimant's underemployment was a direct result of his impairment and that, under the circumstances of his limited use of his left hand which reduced his ability to work and his employment with employer, he made a good faith effort to obtain employment commensurate with his ability to work during the filing period in issue. Clearly, there was conflict in the evidence and the claimant was not entirely clear in his testimony; however, we cannot from our review of the evidence

conclude that the determination of the hearing officer was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, recognizing that there is evidence to support inferences different from those found most reasonable by the hearing officer. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). With regard to the direct result issue, it is apparent that the claimant suffered a serious injury to his hand, materially reducing its usefulness during the time frame, and that he could not return to the type of work he was doing when injured. This is evidence from which a determination that the underemployment was a direct result of the impairment could be made. (Emphasis added.) Texas Workers' Compensation Commission Appeal No. 970613, decided May 12, 1997. Regarding his good faith attempt to obtain employment commensurate with his ability to work, there is some probative evidence to support the hearing officer's finding in that the claimant was employed and apparently continued in the employ of employer during the filing period although he did not work for a period of some six weeks during the filing period because of conflicting reasons. See Texas Workers' Compensation Commission Appeal No. 971349, decided August 25, 1997. The hearing officer chose to believe the claimant's version. We cannot hold, as a matter of law, that the hearing officer's determination was against the overwhelming weight of the evidence to require reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the decision and order are affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Alan C. Ernst  
Appeals Judge