

APPEAL NO. 991930

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 August 11, 1999. She (the hearing officer) determined that the claimant was entitled to supplemental income benefits (SIBS) for the fifth quarter. The appellant (carrier) appeals this determination, contending that it is not supported by the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant sustained a compensable low back injury on \_\_\_\_\_. He reached maximum medical improvement on April 4, 1997, and was assigned a 19% impairment rating (IR).

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBS after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage (AWW) as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)), the quarterly entitlement to SIBS is determined prospectively and depends on whether the employee meets the criteria during the prior quarter or "filing period." Under Rule 130.101, "filing period" is defined as "[a] period of at least 90 days during which the employee's actual and offered wages, if any, are reviewed to determine entitlement to, and amount of, [SIBS]." The fifth SIBS quarter was from May 8, 1999, to August 6, 1999. The hearing officer found that the claimant made the required good faith job search during the filing period and established that his underemployment was a direct result of his impairment. The carrier appeals only the direct-result finding.

Before the filing period for the quarter in issue, the claimant moved from (city 1) to (city 2) where he engaged in self-employment doing minor home repairs not involving heavy lifting. He introduced evidence of his efforts to advertise his business. During this period he spent a number of days outfitting a workshop at home. He further testified that the weather prevented work, especially painting, on some days; that he had to attend to health problems of his children; and that his truck needed repairs on a monthly basis. To make up for the lack of transportation, he provided evidence that he rented a vehicle for as long as he could afford to and borrowed a car from a relative. During this time, he earned \$2,166. On June 15, 1999, the claimant began full-time work for an employer.

As noted above, the carrier only appeals the direct result finding. Specifically, appealed are the following findings of fact and conclusion of law:

## FINDINGS OF FACT

3. The Claimant sustained significant lasting effects from the injury with permanent restrictions.
4. The Claimant's unemployment [sic, should be underemployment] is a direct result of the impairment from the compensable injury.

## CONCLUSION OF LAW

3. The claimant is entitled to [SIBS] for the 5th compensable quarter, 5/8/99 to 8/6/99.

In its appeal, the carrier asserts that the claimant failed to establish significant effects from an injury "with permanent restrictions." In support of this position, it argues that the medical records establish a release to full-time work before the filing period "with either no restrictions or a restriction of not lifting over 15 to 25 pounds." The claimant testified that it was his understanding that he continued to have lifting restrictions during the filing period. The carrier further argues that the claimant's self-employment did not require that he exceed these restrictions. The claimant's testimony, which the hearing officer could choose to credit, was that he limited his business to work within his restrictions and had to give up some work that did not meet the restrictions. The fact that he has an IR also suggests some reasonably presumed permanent impairment from the compensable injury.

See Section 401.011(23). Even the carrier appears to admit in its appeal that there was some evidence of continued restrictions.

The carrier in its appeal also counts the days (approximately 23) during the filing period when the claimant was involved in fixing his vehicle or his home workshop and suggests that this along with three bad weather days and time spent on the medical needs of his children broke the connection between the impairment and the underemployment. We do not agree that preparing for work or addressing emergencies during the filing period where a self-employed claimant has demonstrated an actual work history establishes as a matter of law that the underemployment was not a direct result of the impairment. We have held in the past that the impairment need only be a cause, not the only cause of underemployment or unemployment. Texas Workers' Compensation Commission Appeal No. 961981, decided November 18, 1996.

Ultimately, whether the claimant's underemployment was a direct result of the claimant's impairment from a compensable injury was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. We will reverse a factual determination of a hearing officer only if that determination is 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the

record of this case, we find the evidence sufficient to support the direct-result findings of the hearing officer.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge