APPEAL NO. 000776

On March 17, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issue by deciding that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th quarter. Appellant (carrier) requests that the hearing officer=s decision be reversed and that a decision be rendered in its favor. No response was received from the claimant.

DECISION

Affirmed.

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). The new SIBs rules effective January 31, 1999, apply to this case. The parties stipulated that claimant sustained a compensable injury on _____; that she has at least a 15% impairment rating; and that she did not commute impairment income benefits. The 13th quarter was from December 23, 1999, to March 23, 2000, and the qualifying period for that quarter was from September 10, 1999, through December 9, 1999. Claimant testified that she injured her arms and back on _____. She said that her job at that time involved weighing and balancing airplanes. Dr. W, claimant=s treating doctor, diagnosed claimant as having bilateral carpal tunnel syndrome (CTS), a wrist sprain, a cervical sprain, fibromyalgia, cervical disc displacement, and degenerative disc disease. Dr. W wrote in March 1999 that it was indeterminate when claimant could return to full-time work. Claimant said that she started working in her daughter=s clothing store doing bookkeeping work in July 1997; that Dr. W limited her to working four hours a day for four days a week; and that she worked four hours a day for four days a week until November 1, 1999.

At carrier=s request, Dr. B performed a functional capacity evaluation (FCE) on claimant in May 1999 and Dr. B reported that there did not appear to be any medical reason which would preclude claimant from traveling to work, being at work, and performing appropriate tasks and functions. Dr. B noted certain work restrictions pertaining to claimant=s neck, hands, and forearms. Dr. B noted that a December 1996 FCE report done by someone else had stated that claimant was not able to work at that time. Dr. B wrote in July 1999 that claimant is not precluded from working for eight hours a day but that her working tasks must be within the confines of the criteria outlined in her medical records and his May 1999 report.

Dr. W wrote in May 1999 that claimant continued to have back, neck, and hand pain and in October 1999 noted that claimant continued to have problems with her CTS. Claimant said that on November 1, 1999, Dr. W allowed her to begin working six hours a day for five days a week and that she worked six hours a day for five days a week at her daughter=s clothing store beginning on November 1st. Dr. W wrote on November 8, 1999, that claimant began working six hours a day on November 1st and that she would continue working light duty

six hours a day until December 6, 1999, when she would begin working eight hours a day. However, on a work-status form also dated November 8, 1999, Dr. W noted that claimant would work sedentary work for eight hours a day beginning November 8, 1999. But in a December 9, 1999, work-status form, Dr. W noted that claimant could work sedentary work for eight hours a day beginning on December 1, 1999, and claimant said that Dr. W released her to work eight hours a day as of December 1, 1999. In a letter dated February 28, 2000, Dr. W wrote that claimant was able to work six hours a day from November 1st through November 7th and eight hours a day from November 8th through November 29th.

Claimant said that from November 14 to December 7, 1999, approximately the last three weeks of the filing period, she had to leave work to go to Greece to help her mother who has terminal cancer and that when she returned to work on or about December 10, 1999, she worked eight hours a day for five days a week and continues to do so. Claimant said that during the qualifying period she made $7.00 an hour. She said that the copies of the checks that are in evidence and the wage information on her Application for SIBs for the 13th quarter accurately reflect her earnings during the qualifying period. With regard to carrier=s complaint regarding claimant=s response to the subpoena, while claimant said that she did not provide carrier with a copy of a work log, we note that claimant testified that the hours noted on the copies of the checks that her attorney gave to carrier accurately reflect the number of hours she worked.

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 which is relatively equal to the injured employee=s ability to work. Section 130.102(c) provides that an injured employee has earned less than 80% of the employee=s average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The hearing officer found that during the qualifying period, claimant was not required to seek employment because her part-time employment fulfilled the maximum limits allowed by Dr. W and that claimant=s underemployment during the qualifying period was a direct result of her impairment from her compensable injury. The hearing officer concluded that claimant is entitled to SIBs for the 13th quarter.

There is conflicting evidence in this case regarding the number of hours claimant could work. The hearing officer noted in his decision that he gave greater weight to Dr. W=s findings than he did to Dr. B=s findings. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence. Carrier contends that claimant is not entitled to SIBs because she left the work force during the last three weeks of the qualifying period. What claimant did was to take leave to take care of her sick mother for about three weeks and then returned to full-time work. We cannot conclude that the hearing officer erred as a matter of law in determining that claimant was entitled to SIBs. *See* Texas Workers= Compensation Commission Appeal No. 000321, decided March 29, 2000, for a discussion of the return-to-

work provision in Rule 130.102(d)(1). That decision notes that if a claimant has returned to work in a position which is relatively equal to the injured employee=s ability to work, the employee does not have to show that he looked for work every week of the qualifying period. We conclude that the hearing officer=s decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer=s decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge