

APPEAL NO. 001060

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 April 22, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 16th compensable quarter, beginning November 28, 1999, and ending February 12, 2000. The appellant (carrier) appeals the hearing officer's determination regarding direct result on sufficiency grounds. The determination regarding good faith was not appealed. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant is entitled to SIBs. Carrier asserts that claimant's underemployment is not a direct result of his impairment. Carrier contends that claimant is working for less money and carrier should not have to subsidize claimant's choice of a lower-paying job.

Sections 408.142(a) and 408.143 provide, in part, that an employee is entitled to SIBs when the employee has not returned to work or has earned less than 80% of the average weekly wage as a direct result of the impairment. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant sustained a compensable injury in _____. He said he underwent back surgery in 1995 and 1999, and that he had returned to full-time work with another employer, within his work restrictions, in 1997. Claimant said he is working doing automotive customer assistance and sales and that he has a special chair he uses at work. Claimant said his doctors have discussed additional surgery with him, but he does not intend to have more surgery unless his condition further deteriorates. Claimant said he still has pain from his injury. It was not clear from the evidence what duty level claimant's current job is or what duty level the job was that he was doing at the time of the injury.

In a February 1999 report, Dr. G discussed whether an MRI was needed. Dr. G noted a decrease in claimant's neck pain, low back pain radiating into claimant's right leg, and spinal stenosis, and said claimant was doing well "at the present time." There was no medical evidence listing work restrictions for claimant. Claimant said his work restrictions from his injury include no lifting over 40 pounds and no standing or sitting for over 30 to 45 minutes. The hearing officer could consider the evidence and determine that claimant

continued to have work restrictions. See Texas Workers' Compensation Commission Appeal No. 972329, decided December 22, 1997. The evidence that claimant continues to have work restrictions supports the hearing officer's direct result determination. Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994.

Carrier contends that claimant did not have any work restrictions, pointing to Dr. G's February 10, 1999, Specific and Subsequent Medical Report (TWCC-64). In that report, Dr. G checked a box indicating that claimant could return to "normal" work and that he had been released to full-time work in 1995. However, claimant had been working at his present job for three years as of the time of the hearing. Therefore, it is possible that when Dr. G referred to "normal work," he meant the work that claimant had been doing since 1997. The reference in the TWCC-64 to "normal" work stated that claimant had been released to "full-time" work in July 1995 and was dated in February 1999. However, claimant said that since 1995, he had undergone back surgery in July 1999, and that he had an "unstable disc." Considering the medical records and testimony, we conclude that Dr. G's references in the TWCC-64, at best, created an ambiguity regarding the work restrictions claimant has had since 1995 and the work restrictions he had during the qualifying period.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge