

APPEAL NO. 001117

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 25, 2000. The hearing officer determined that the respondent's (claimant) average weekly wage (AWW) is \$378.33. The appellant self-insured ("carrier") appealed the AWW determination, contending that the AWW should not include amounts for meals or a uniform. The claimant responded that the Appeals Panel should affirm the hearing officer's decision.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant's AWW is \$378.33. Carrier asserts that claimant did not have any fringe benefits and that meals claimant had at work and the uniform provided to claimant should not have been considered by the hearing officer in making his determination.

The hearing officer summarized the evidence in his decision. Briefly, claimant worked as a sheriff's deputy for ten weeks before his _____, compensable injury. The wage statement offered indicated that claimant worked 13 weeks for \$267.83 per week, although claimant worked only 10 weeks. Claimant testified that he worked four days per week, ten hours per day. Claimant said he ate two to three meals per day, at no cost to him, at work. Claimant said that the meals were cooked by the inmates. Claimant said no one ever told him to reimburse the employer for the food and that he never did so. Claimant said he was also provided with uniforms to wear. Claimant calculated his AWW by adding \$80.00 per week for meals (\$10.00 x 8 meals/week); \$16.50 per week for his uniform; and \$30.00 per week for his bullet proof vest. The hearing officer determined that these amounts should be added to claimant's AWW, but that \$2.00 per meal, for a total of \$16.00, should be subtracted as the amount that claimant was to pay employer for a meal. The hearing officer added these amounts to the \$267.83 listed on claimant's wage statement as his weekly pay and determined that claimant's AWW is \$378.30. The hearing officer stated that he used the "just, fair and reasonable" method to calculate claimant's AWW. See Rule 128.3(g). The hearing officer noted that a wage statement for a similar employee is not in evidence.

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.

Rule 128.1(b) states, in pertinent part:

An employee's wage, for the purpose of calculating the average weekly wage shall include every form of remuneration paid for the period of computation of average weekly wage to the employee for personal services. An employee's wage includes, but is not limited to:

* * *

- (2) the market value of any other advantage provided by an employer as remuneration for the employee's services that the employer does not continue to provide, including but not limited to meals, lodging, clothing, laundry, and fuel; and

The hearing officer considered claimant's testimony and the documentary evidence in determining what facts were established. The hearing officer determined whether meals and a uniform were an advantage provided by claimant's employer as remuneration for claimant's services as an employee. Texas Workers' Compensation Commission Appeal No. 960259, decided March 25, 1996. We have reviewed the hearing officer's determinations in this case and we conclude that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Robert E. Lang
Appeals Judge