

## APPEAL NO. 001170

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 May 3, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the third quarter. The appellant (carrier) appeals the hearing officer's decision, urging that the overwhelming weight of the evidence is in direct opposition to the hearing officer's decision and should be reversed. The claimant replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

### DECISION

Affirmed.

The claimant sustained a compensable back injury on \_\_\_\_\_, while working as a meat cutter. At the time of the injury, the claimant was also employed as a part-time preacher earning \$25.00 per week. The claimant testified that had been a meat cutter since 1956 and began preaching in 1970. From 1970 through 1985, the claimant worked as a full-time pastor, earning \$85,000 per year.

The qualifying period for the third quarter was from October 16, 1999, through January 14, 2000. The claimant did not make a job search during the qualifying period. The claimant testified that he was employed as a minister full-time, 50 to 60 hours per week, earning \$200.00 per week. The claimant testified that his work as a pastor is commensurate with his restrictions of limited standing, bending, lifting and walking. According to the claimant, his wages increased to \$225.00 per week on May 1, 2000.

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 as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (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. Rule 130.102(e) provides in pertinent part that, except as provided in subsections (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000, states that if a claimant has returned to work in a position which is relatively equal to the injured employee's ability to work, he does not have to show that he looked for work every week of the qualifying period.

The carrier contends that the evidence does not support the hearing officer's findings that the claimant had some limited ability to work; that the claimant had a full-time job; that the full-time job held by the claimant was equal to his ability to work; that the claimant made a good faith effort to find employment commensurate with his ability to work; and that the claimant's underemployment is a direct result of his impairment. The carrier argues that the claimant has restricted his employment to the ministerial field and he should seek additional employment or seek ministerial work at a higher income level.

In Texas Workers' Compensation Commission Appeal No. 000365, decided March 31, 2000, which involved the claimant's entitlement to SIBs for the second quarter and virtually identical facts, the carrier raised the same arguments concerning the claimant's entitlement to SIBs. In Appeal No. 000365, we affirmed the hearing officer's decision that the claimant was entitled to SIBs, noting that the carrier had cited no authority for its argument that a claimant who holds two jobs at the time of his injury is required to seek a second job after his injury in order to meet the good faith criterion for SIBs.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer had to judge the credibility of the evidence before him in order to determine whether the evidence presented was sufficient to meet the criterion of Rule 130.102(d)(1). In deciding whether a job is "relatively equal," the hearing officer should consider the nature of the work, the work restrictions, and the hours worked, not whether the wages paid were equal. See Texas Workers' Compensation Commission Appeal No. 992762, decided January 28, 2000. The hearing officer considered all of the evidence and concluded that the job held by the claimant during the qualifying period was one which was relatively equal to his ability to work.

The carrier asserts that the claimant's underemployment during the qualifying period for the third quarter was not a direct result of his impairment. The claimant's testimony, in conjunction with the medical evidence, reveals that the claimant cannot return to the work of a meat cutter that he was performing at the time of his injury.

As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's determinations that the claimant made a good faith effort to find employment commensurate with his ability to work; that the claimant's underemployment is a direct result of his compensable impairment; and that the claimant is entitled to SIBs for the third quarter.

The decision and order of the hearing officer are affirmed.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge