

## APPEAL NO. 001183

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 20, 2000. The issues concerned the entitlement of the appellant (claimant) to supplemental income benefits (SIBs) for her fifth quarter of eligibility. The hearing officer determined that the claimant had some ability to work during the qualifying period but did not make a good faith search for employment commensurate with her ability to work. The claimant has appealed, arguing that this decision is against the great weight and preponderance of the evidence. The claimant points out that the respondent (carrier) agreed that her psychological condition was part of her compensable injury but makes a contradictory argument that her inability to work, which results, is not the result of her injury. The carrier responds by reciting evidence in favor of the hearing officer's decision.

### DECISION

We affirm the hearing officer's decision.

This is a case in which the trier of fact was squarely presented with resolving conflicting medical testimony, as well as applying the "new" SIBs rules in effect during this qualifying period. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ).

There are two eligibility criteria that must be met to continue after the first quarter to qualify for SIBs, set out in Section 408.143(a). The injured employee must prove that he or she has earned less than 80% of the employee's average weekly wage as a direct result of the employee's impairment and in good faith sought employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.103(d)(3) (Rule 130.102(d)(3)) defines good faith (as applicable to this case) as follows:

Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

- (3) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

By a benefit review conference (BRC) agreement dated in October 1999, the parties agreed that certain components of the claimant's emotional illness were, and were not, part of the compensable injury. The claimant's recurrent depression and pain disorders associated with her neck injury were considered part of the compensable injury, while post-traumatic stress disorder, mixed personality disorder with borderline and dependency features, and dissociative disorder were not causally related. In this case, the psychologist for the claimant, Dr. F, and a psychiatrist for the carrier, Dr. C, both testified at the CCH. The claimant was not in attendance.

The claimant injured her neck on \_\_\_\_\_, and had cervical surgery on July 22, 1996. Dr. F began treating the claimant for pain management in 1997 and at that time did not notice acute manifestations of psychological disorders that he later came to see. Dr. F asserted that the claimant's inability to work was caused largely by her injury-related depression. He noted that she was hospitalized for a week in November 1999 for self-mutilation and depression.

Dr. C had examined the claimant along with Dr. P on May 13, 1999. He conceded the possibility that her condition could have changed. He concluded from her ability to go through examinations and testing for that entire day that she had some ability to work. Dr. C recommended in a written report that reentry into such activity should be gradual after work hardening. He contended that most of her acute conditions did not result from her reaction to her compensable injury but from a number of other stressors or from her preexisting personality disorders.

Dr. C wrote in a report of his examination that most of the claimant's psychological therapy was related to post-traumatic stress disorder, rather than her injury. By contrast, Dr. F stated that very little was related to this condition. There were reports indicating that the claimant's acute symptoms did not start until she had gone into pain management, where apparently the need was perceived to probe into her preinjury history of abuse.

Dr. F's treatment notes are in evidence. His December 20, 1999, note indicated that she was stronger than a year ago and less depressed and more able to handle the holiday season. He documented throughout his treatment the claimant's strong anger and depression relating to the insurance company's handling of the claim. A May 13, 1999, functional capacity evaluation reported that the claimant could perform at the light-duty level.

A brief letter from Dr. K, sets out that the claimant cannot "mentally" do any work and that this results from her psychological, rather than physical, condition.

The hearing officer evidently chose to believe Dr. C over Dr. F. He could further believe that Dr. C's written reports constituted records which showed an ability to work. We do not agree that the carrier's contentions are at odds with the scope of injury as set forth in the BRC agreement. Finally, the hearing officer could believe that neither Dr. K nor Dr. F explained how or why the claimant's depression would cause the lack of *any* ability (even

on a part-time basis) to work. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Kathleen C. Decker  
Appeals Judge