

APPEAL NO. 001222

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 originally held on _____, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 992666, decided January 13, 2000, the Appeals Panel reversed the decision of the hearing officer and remanded for the production of information necessary to determine the net profit or loss for the filing and qualifying periods for the 10th, 11th, and 12th quarters for supplemental income benefits (SIBs) and for the hearing officer to determine whether the respondent (claimant) is entitled to SIBs for those quarters. The hearing officer held another hearing on May 4, 2000. The claimant elected not to pursue entitlement to SIBs for the 10th quarter. The hearing officer rendered another decision on May 8, 2000, in which she determined that the claimant is entitled to SIBs for the 11th quarter and that he is not entitled to SIBs for the 12th quarter. The determination that the claimant is not entitled to SIBs for the 12th quarter has not been appealed and has become final under the provisions of Section 410.169. The appellant (carrier) appealed the determination that the claimant is entitled to SIBs for the 11th quarter, contended that the claimant's unemployment during the qualifying period was not a direct result of his impairment from the compensable injury, urged that the hearing officer erred in considering certain expenses in determining net profit, and requested that the Appeals Panel reverse the determination that the claimant is entitled to SIBs for the 11th quarter and render a decision that he is not. A response from the claimant has not been received.

DECISION

We affirm.

The carrier contended that expenses such as accounting expenses, health insurance, office maintenance, repairs, and utilities should not be used to calculate net earnings because they are not reasonably related to the production of income. In Appeal No. 992666, *supra*, we included a quote from Texas Workers' Compensation Commission Appeal No. 970519, decided April 30, 1997. In Appeal No. 970519, the Appeals Panel also stated that there was testimony from a certified public accountant (CPA) and that normal operating and fixed expenses may be deducted from gross receipts to determine net income. In Appeal No. 992666, *supra*, we stated that expenses listed for one qualifying period, such as insurance for company vehicles and interest expense, appeared to be for more than the qualifying period and that such expenses should be prorated for the time that each covered.

The claimant's daughter testified that she is the manager of the business owned by the claimant and that she provides information to a CPA who prepares tax returns for the business. The record contains considerable documentation concerning expenses. In the discussion in her Decision and Order on remand, the hearing officer stated that the facts in the case before her are virtually identical to those in Appeal No. 970519, *supra*. She

also explained why she permitted some expenses to be used to determine net income and why she did not permit others. The record does not indicate that she did not properly apply the law to the facts nor does it indicate that she did not use acceptable accounting practices in determining the net income for the business. We do not find merit in the contention of the carrier that the hearing officer erred in determining what expenses to deduct from gross income to determine net income for the purposes of determining the wages of the claimant during the qualifying period for the 11th quarter. We affirm the hearing officer's finding of fact that during the qualifying period for the 11th quarter the claimant had not returned to work earning at least 80% of his preinjury average weekly wage.

The carrier also appealed the determination that during the qualifying period for the 11th quarter the claimant's underemployment was a direct result of his impairment from the compensable injury. In Appeal No. 992666, *supra*, we held that the hearing officer did not err in applying the law concerning the direct result criterion to the facts. We, again, affirm the determination that the claimant's underemployment during the qualifying period for the 11th quarter was a direct result of his impairment from the compensable injury.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge