

APPEAL NO. 001952

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 June 26, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 14th, 15th, or 16th quarters and that claimant's weekly earnings during the 16th quarter could not be determined. Claimant appealed the adverse determinations on sufficiency grounds, contending that his documentation regarding his self-employment was adequate. Respondent self-insured ("carrier" herein) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he is not entitled to SIBs for the 14th, 15th, and 16th quarters. He asserts that: (1) he provided adequate receipts and expenses and a spread sheet; (2) he has always provided records to carrier in the same way for the past 13 quarters; (3) his documents are complete and well-organized; (4) his spreadsheet and "pay checks" document that he earned less than 80% of his average weekly wage (AWW); (5) his truck repair and bookkeeping expenses were a valid expense; (6) his skills and efforts showed that he acted in good faith; and (7) it is difficult to "fit" his truck-driving work into the SIBs requirements.

Claimant testified that he sustained a compensable neck injury in _____, after which he underwent two cervical spinal surgeries. Claimant said he is unable to return to his former job as a mechanic because of his permanent work restrictions. He testified that he began working as a self-employed truck driver and that he worked full-time as such during the qualifying periods in question. Claimant testified regarding his expenses and how he provided check stubs and receipts to carrier to document his expenses. The record contains three spreadsheets regarding the three qualifying periods in question, created by claimant's bookkeeper, which reflect his income and expenses from his self-employment. Claimant said he contracts with a trucking company (company) to truck refrigerated goods for them and he is paid by check for his work.

The hearing officer determined that: (1) claimant is unable to go back to his former work as a mechanic; (2) during the qualifying periods in question, claimant's efforts as a self-employed long-haul truck driver were substantial; (3) claimant's self-employment "is relatively equal to" claimant's ability to work; (4) claimant made a good faith effort to work during the qualifying periods in question; (5) it is impossible to determine claimant's true earnings from employment; and (6) claimant's underemployment during the qualifying periods in question is not a direct result of his impairment.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.101 (Rule 130.101) contains definitions and subsection (1) states:

Application for [SIBs] — The Commission [Texas Workers' Compensation Commission] form TWCC-52 containing the following information:

- (A) a statement, with supporting payroll documentation, that the employee has earned less than 80% of the employee's [AWW] as a direct result of the impairment from the compensable injury;
- (B) the amount of the employee's wages during the qualifying period;
- (C) a statement, with supporting information such as that outlined in §130.102(e) of this title (relating to Eligibility for [SIBs]; Amount), that the employee has in good faith sought employment commensurate with the employee's ability to work; and
- (D) for self-employed individuals, copies of all supporting documentation such as, business plans, contacts, sales tax registration, and any other pertinent documentation to document all efforts to establish or maintain a self-employed enterprise during the qualifying period.

In this case, the hearing officer determined that claimant proved and documented that he made a good faith effort to obtain employment commensurate with his ability to work. However, the hearing officer determined that claimant did not meet his burden of proof regarding the direct result criterion and that he also did not provide adequate documentation with his TWCC-52s. From the record, the hearing officer could determine that claimant did not provide adequate documentation to show that he has “earned less than 80% of [his] AWW as a direct result of [his] impairment.” Claimant did attach many receipts and checks to his TWCC-52s, along with spreadsheets. However, some documents are missing. For instance, for all three quarters, some check stubs are missing which show payments to claimant from company. Claimant was required to document all of his efforts to establish or maintain a self-employed enterprise during the qualifying periods. This would include documentation of any cash flow, so that claimant could prove that he is underemployed and earning less than 80% of his AWW. We note that claimant did not include bank statements or tax records as additional documentation of his income or cash flow. After reviewing the record, we conclude that the hearing officer’s determinations are 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).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge