

APPEAL NO. 002027

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 August 15, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. Appellant (carrier) contends the hearing officer erred in determining that claimant met the good faith and direct result requirements and that he is entitled to SIBs. The appeals file does not contain a response from claimant.

DECISION

We reverse and render.

Carrier contends the hearing officer erred in determining that claimant made a good faith effort to obtain employment. There was evidence that claimant was working during the qualifying period and that the employment was within his restrictions. Claimant said his doctor had not returned him to work but he worked during the qualifying period anyway. Claimant said he is no longer able to do heavy lifting, that his doctor told him he could not do heavy lifting, and that he was not required to lift heavy items at work during the qualifying period. Carrier contends that claimant did not have any medical evidence of his work restrictions. However, medical evidence of work restrictions is not required. See Texas Workers' Compensation Commission Appeal No. 001060, decided June 29, 2000; Texas Workers' Compensation Commission Appeal No. 972329, decided December 22, 1997. From the evidence, the hearing officer could determine that, during the qualifying period, claimant returned to full-time work that was relatively equal to his ability to work. We conclude that the hearing officer's good faith 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).

Carrier contends that the hearing officer erred in determining that c's underemployment is a direct result of his impairment. Carrier asserts that claimant did not establish that he earned less than 80% of his average weekly wage(AWW). Carrier asserts that claimant did not document the wages he earned at his new job, made during the last few weeks of the qualifying period, from April 7, 2000, to April 20, 2000. Claimant began a new job on April 7, 2000, and did not list his wages from these last weeks on his Application for [SIBs] (TWCC-52). Claimant said he was paid weekly, but he did not attach any pay stubs or other documentation regarding his earnings. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.101(Rule 130.101) states, in relevant part:

- (1) [TWCC-52] - The 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; . . .

Rule 130.104(b) and (c) state, in part, as follows:

- (b) [TWCC-52]. An injured employee claiming entitlement to [SIBs] for a subsequent quarter must send the carrier [a TWCC-52] as required under this section. . . .
- (c) Filing the [TWCC-52]. The employee shall file the [TWCC-52] and any applicable documentation with the carrier

The record does not contain any documentation of claimant's earnings from April 7, 2000, to the end of the qualifying period. Claimant testified that he earned \$13.50 per hour after April 6, 2000; that he worked fulltime but was paid based on about 20 billable hours per week; and that he earned about the same amount that he had earned during the prior weeks of the qualifying period. We note that the hearing officer determined that claimant earned \$13.00 per hour rather than \$13.50 per hour. Claimant did not testify regarding the number of hours he worked for each week after April 6, 2000, and the number of hours is not reflected on any pay stub or other documentation. Given the requirements of the new rules, we conclude that the hearing officer's direct result determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We reverse the hearing officer's determination that claimant is entitled to SIBs and render a determination that claimant is not entitled to SIBs.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge