

APPEAL NO. 002290

On September 12, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits for the 1st through the 20th quarters and that the claimant has permanently lost entitlement to SIBs. The claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. The respondent/cross-appellant (carrier) requests that the hearing officer's finding in favor of the claimant on the direct result criterion for SIBs be reversed and that a decision be rendered that the claimant did not meet the direct result criterion for SIBs.

DECISION

Affirmed.

Section 408.142(a) provides that an employee is entitled to SIBs if on the expiration of the impairment income benefits (IIBs) period the employee has an impairment rating (IR) of 15% or more; has not returned to work or has returned to work earning less than 80% of the employee's average weekly wage as a direct result of the employee's impairment; has not elected to commute a portion of the IIBs; and has attempted in good faith to obtain employment commensurate with the employee's ability to work. Section 408.146(c) provides that an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury.

The parties stipulated that the 1st quarter began on September 26, 1995, and the 20th quarter ended on September 18, 2000. The SIBs rules in effect prior to January 31, 1999, apply to the 1st through the 15th quarters. The SIBs rules that were effective January 31, 1999, apply to the 16th through the 20th quarters.

The claimant testified that he injured his entire spine when he was hit in the back by a machine at work on _____. The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on May 9, 1994, with a 24% IR; that he did not commute IIBs; and that during the filing periods for the 1st through the 15th quarters and the qualifying periods for the 16th through the 20th quarters the claimant earned no wages and did not seek employment. The claimant claims that he was totally unable to work during the relevant filing and qualifying periods.

Dr. N has treated the claimant for his work injury of _____, since February 1994. Dr. N diagnosed the claimant as having a cervical sprain and a lumbosacral sprain. Dr. N noted in February 1995 that the claimant could return to a limited type of work. In June 2000, Dr. N wrote that the claimant's MRI study of March 1994 showed mild degenerative changes in his back and neck; and that the claimant will be unable to obtain or maintain any type of gainful employment or be retrained for any type of gainful

employment because of chronic neck and back symptoms from his work injury, exacerbation of preexisting degenerative changes, and unresponsiveness to conservative treatment, which, he stated, included spinal injections, and psychiatric care for posttraumatic depression.

Dr. C examined the claimant at the carrier's request in June 1994 and Dr. C wrote that the claimant can work from a physical standpoint but not from an emotional standpoint, noting that the claimant was under psychiatric care because of domestic problems and not because of his back.

Dr. H examined the claimant at the carrier's request in November 1997 and Dr. H wrote that the claimant should be able to return to his job as a leather assembler and that he saw no reason why the claimant cannot do so.

The hearing officer found that during the relevant filing and qualifying periods for the 1st through the 20th quarters, the claimant failed to prove that he was unable to work; that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work; and that the claimant's unemployment was a direct result of his impairment. The hearing officer concluded that the claimant is not entitled to SIBs for the 1st through the 20th quarters and that the claimant has permanently lost entitlement to SIBs under Section 408.146(c). The claimant appeals the findings on the good faith criterion for SIBs and the carrier appeals the findings on the direct result criterion for SIBs. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Thomas A. Knapp
Appeals Judge