

APPEAL NO. 002480

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 September 11, 2000. The issue at the CCH was whether the respondent (claimant herein) was entitled to supplemental income benefits for the fourth quarter. The hearing officer determined that the claimant was entitled to these benefits. The appellant (carrier herein) files a request for review arguing that the claimant's underemployment during the qualifying period for the fourth compensable quarter was not a direct result of her impairment from the compensable injury. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We adopt the hearing officer's rendition of the evidence. At the time of her compensable injury on _____, the claimant was employed as an insurance underwriter. The claimant testified that she was unable to return to her prior job because the employer refused to accommodate her restrictions. The claimant worked for another insurance company as an underwriter from November 1998 until December 1999 when she was terminated due to downsizing of the company. On March 20, 2000, the claimant began working as a secretary 40 hours per week. The claimant testified that her duties were within her restrictions. There was evidence that during the qualifying period for the fourth quarter, which ran from March 18, 2000, to June 16, 2000, that the claimant earned less than 80% of her preinjury average weekly wage (AWW).

Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) provides that an injured worker has earned less than 80% of his AWW has a direct result of the compensable injury if the impairment from the compensable injury is a cause of the reduced of the earnings. We have repeatedly held that this determination is a question of fact. The hearing officer's finding of fact that the claimant's injury was a direct result of her impairment is not so contrary to 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). The Appeals Panel has previously stated that a claimant working full-time with restrictions is not required to seek higher-paying employment to meet the direct result requirement. See Texas Workers' Compensation Commission Appeal No. 970283, decided April 1, 1997 (Unpublished); Texas Workers' Compensation Commission Appeal No. 961875, decided November 1, 1996; and Texas Workers' Compensation Commission Appeal No. 980730, decided May 22, 1998.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge