

## APPEAL NO. 002568

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 October 11, 2000. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 9th quarter and that claimant earned \$1767.75 during the qualifying period for that quarter. Appellant self-insured ("carrier" herein) appealed the determination that claimant is entitled to SIBs. Claimant responded that the hearing officer's decision is correct.

### DECISION

We affirm.

Carrier contends that the hearing officer erred in determining that claimant is entitled to 9th quarter SIBs. Carrier asserts that claimant is able to work full-time but she did not prove that she was actually working full-time during the qualifying period.<sup>1</sup>

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. See Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000.

Claimant testified that during the qualifying period, she worked 20 to 30 hours per week as her husband's helper. Claimant's husband testified that sometimes claimant could not work because of her injury. There was medical evidence from claimant's treating doctor that she could work four hours per day. In a letter to carrier, Dr. N stated that claimant could probably do restricted work for four to six hours per day.

As the finder of fact, the hearing officer resolved any conflicts in the evidence and determined the number of hours claimant was able to work. The hearing officer could find from the evidence that claimant returned to work in a position which is relatively equal to her ability to work. Therefore, claimant was not required to look for work. Texas Workers' Compensation Commission Appeal No. 000776, decided May 30, 2000. We note that, although carrier asserted that claimant was not credible, the hearing officer stated that claimant's testimony was credible. Carrier also complains that the hearing officer stated that claimant works 30 hours per week. However, the hearing officer did not state that it was his determination that claimant worked exactly 30 hours per week. We conclude that the hearing officer's determination that claimant is entitled to 9th quarter SIBs is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

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<sup>1</sup>Carrier did not assert that claimant earned more than 80% of her average weekly wage.

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge