APPEAL NO. 002700

Following a contested case hearing held on November 2, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the respondent (claimant) had returned to work relatively equal to his ability to work during the qualifying period for the seventh quarter of supplemental income benefits (SIBs) and was entitled to the seventh quarter of SIBs. The appellant (carrier) appeals, urging that the hearing officer's decision that the claimant's part-time employment is relatively equal to the claimant's ability to work is against the great weight of the evidence, and requests that the hearing officer's decision be reversed and a new decision rendered that the claimant is not entitled to SIBs for the seventh quarter.

DECISION

Affirmed.

The claimant presented evidence, in the form of a note from his treating doctor dated August 29, 2000, that he is able to work from four to six hours a day at a sedentary job with no lifting of over eight pounds. The doctor's note also indicates that the claimant can sit for up to 30 minutes, with positional changes as needed for comfort, but that he should do no bending, twisting, or stooping and should not pull more than 35 pounds. The hearing officer found that the claimant's two part-time jobs, one as a crossing guard for the DISD for two hours a day and the other with CISC for two to three hours a day, constitute employment commensurate with the claimant's ability to work. It is noted that the claimant's job with DISD ended on the day the qualifying period began, but then he was rehired and began working for DISD as a crossing guard approximately two weeks before the end of the qualifying period.

In Texas Workers' Compensation Commission Appeal No. 000794, decided May 30, 2000, we held that 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. Rule 130.102(e) provides in pertinent part that, except as provided in subsections (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. *See also* Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000; and Texas Workers' Compensation Commission Appeal No. 000776, decided May 30, 2000. Appeal No. 000321, *supra*, states that if a claimant has returned to work in a position which is relatively equal to the injured employee's ability to work, he does not have to show that he looked for work every week of the qualifying period.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The hearing officer's determination that the claimant had returned to employment during the qualifying period which was relatively equal to his ability to work is supported by the evidence and is not so against the great weight of the evidence as to be clearly wrong.

We affirm the decision and order of the hearing officer.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge