

## APPEAL NO. 010236

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 January 3, 2001. With regard to the issue before him, the hearing officer determined that the respondent (claimant herein) was entitled to supplemental income benefits (SIBs) for the 15th compensable quarter. The appellant (carrier herein) filed a request for review arguing that the hearing officer erred in finding that the claimant made a good faith effort to seek employment during the qualifying period for the 15th compensable quarter and in finding that the claimant's underemployment during this period was a direct result of his impairment. The claimant responds that there is sufficient evidence to support the decision of the hearing officer.

### 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 first note that we have previously affirmed decisions of hearing officers finding that the claimant was entitled to SIBs for the 13th compensable quarter (Texas Workers' Compensation Commission Appeal No. 001838, decided September 18, 2000) and for the 14th compensable quarter (Texas Workers' Compensation Commission Appeal No. 002426, decided December 1, 2000). While eligibility to SIBs for each compensable quarter stands on its own, we note that there are a number of similarities between the evidence and the arguments concerning these previous quarters and the 15th compensable quarter.

There was evidence that during the 15th qualifying period the claimant was employed as a school bus driver and operated a small repair business. There was also evidence that the claimant did not actually drive a school bus during the qualifying period for the 15th quarter as it fell during the summer school vacation period, but that the claimant was on call to drive and worked as a school bus driver under a contract in which he was paid on a 12-month basis. In his decision, the hearing officer specifically states that the claimant continued to solicit business for his repair business during the qualifying period for the 15th quarter, which constituted a good faith effort to seek employment. The carrier argues that this was not supported by the evidence. The carrier argues that the claimant spent too little time working on his repair business for his efforts regarding this business to constitute a good faith effort to seek employment.

After reviewing the evidence in the present case we reach the same conclusion as we did in Appeal No. 001838, *supra*, wherein we stated as follows:

In any event, whether the claimant had returned to a position which was relatively equal to his ability to work and whether the claimant's underemployment was a direct result of his impairment are largely factual

determinations within the province of the hearing officer to resolve. After reviewing the record, we conclude that the hearing officer's determinations are 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).

We affirm the decision and order of the hearing officer.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge