

APPEAL NO. 010325

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A hearing was held on January 25, 2001. The hearing officer determined that the respondent's (claimant) underemployment was a direct result of his impairment and that the claimant had established good faith by his actual return to employment, and concluded that the claimant is entitled to fourth quarter supplemental income benefits. The appellant (carrier) appealed and the claimant responded.

DECISION

Affirmed.

The carrier's appeal alleges the evidence was insufficient to show that the claimant's underemployment was a direct result of his impairment, that the claimant had returned to employment commensurate with his ability to work, or that the claimant had made a good faith effort to obtain employment. 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.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge