

APPEAL NO. 010886

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 March 28, 2001. The hearing officer resolved the only disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 10th quarter beginning January 11, 2001, and continuing through April 11, 2001. The appellant (carrier) appealed the decision of the hearing officer. The claimant did not respond.

DECISION

The hearing officer's decision is affirmed.

The carrier contends that the hearing officer erred in finding that the claimant made a good faith effort to search for employment commensurate with his ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) provides that a claimant has made a good faith effort if he or she looked for employment commensurate with his or her ability to work every week of the qualifying period and documented his or her job search efforts.

The claimant testified and offered into evidence his Application for [SIBs] (TWCC-52), which listed his job searches for the 10th quarter. The evidence sufficiently supports the hearing officer's finding that the claimant made a good faith effort to obtain employment commensurate with his ability. We find that the hearing officer did not err in determining that the claimant is entitled to 10th quarter SIBs beginning January 11, 2001, and continuing through April 11, 2001.

The carrier also contends that the claimant's unemployment during the qualifying period was not the direct result of the impairment from his compensable injury, but, rather, was from a heart condition which is unrelated to his injury. Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. A direct result determination is sufficiently supported if the record establishes that the claimant sustained a serious injury with lasting effects such that he cannot reasonably perform the job he was doing at the time of his compensable injury. Texas Workers' Compensation Commission Appeal No. 001847, decided September 15, 2000; Texas Workers' Compensation Commission Appeal No. 001310, decided July 21, 2000.

The claimant testified that his injuries prevent him from doing the lifting he did as a pipefitter. He offered into evidence Dr. A's report which supports his testimony that because of his compensable injury, and not his heart condition, he is restricted to search for sedentary work which he was unsuccessful in obtaining during the 10th quarter. We find that the hearing officer did not err in determining that the claimant has not returned to work as a direct result of his impairment.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. (Section 410.165(a)). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge