APPEAL NO. 010927
FILED JUNE 6, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 27, 2001. The hearing officer resolved the sole disputed issue by determining that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter, from January 5, 2001, through April 5, 2001. The appellant (carrier) appealed the hearing officer's decision and claimant did not respond.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant was entitled to SIBs for the first quarter, from January 5, 2001, through April 5, 2001. The statutory criteria for entitlement to SIBs are provided for in Section 408.142(a) of the 1989 Act. The carrier contends on appeal that the hearing officer erred in determining that the claimant's reduced earnings were a "direct result" of the impairment from his compensable injury. Regarding the "direct result" criteria for entitlement to SIBs, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) provides that an injured employee has earned less than 80% of the employee's average weekly wage (AWW) 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. The claimant, who drove an ice truck for the employer before his injury, testified that his postinjury earnings from a new employer are less than 80% of his AWW as a direct result of the impairment to his left wrist. His impairment rating for that injury, sustained when he fell off a truck, is 17%. The claimant testified that, due to his light-duty restriction he works less than 40 hours per week in a position relatively equal to his preinjury employment. The hearing officer did not err in determining that the claimant returned to work earning less than 80% of his AWW as a direct result of the impairment from the compensable injury of _____, during the qualifying period for the first quarter of SIBs.

The carrier also contends that the hearing officer erred in determining that the claimant made a good faith effort to obtain employment during the qualifying period. 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 throughout the qualifying period, he was employed as a driver for another employer and working within his medical restrictions, albeit for less money. The hearing officer found that the claimant returned to work in a position relatively equal to his ability to work and that he provided sufficient documentation to show that he had made a good faith effort to obtain employment commensurate with his ability to work.

The hearing officer 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, as the finder of fact, to resolve the inconsistencies and conflicts in the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, 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 and we do not find it so in this case. 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 hearing officer's decision and order are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge