

APPEAL NO. 011267  
FILED JULY 09, 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 was held on May 17, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 4th and 5th compensable quarters. The appellant (self-insured) appeals on sufficiency grounds and urges that the Appeals Panel reverse and render a decision that the claimant is not entitled to 4th and 5th quarter SIBs. The claimant responds, urging affirmance.

DECISION

Affirmed.

The self-insured contends the hearing officer erred in determining that the claimant's underemployment was a direct result of his impairment, thus entitling the claimant to SIBs for the 4th and 5th quarters. Conflicting evidence was presented at the hearing regarding "direct result" with the self-insured arguing that the claimant's failure to earn 80% of his average weekly wage was a result of his working for a company owned by his wife. Determination of "direct result" is normally a question of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Also, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) provides that an injured worker establishes a good faith effort to obtain employment if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. In the present case, the hearing officer found that the claimant was working in a job relatively equal to his ability to work and was paid at a market rate for the services he performed. There is sufficient evidence in the record to support the hearing officer's determinations.

Accordingly, we affirm the decision and order of the hearing officer.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge