

APPEAL NO. 011301
FILED JULY 18, 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 29, 2001. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fourth quarter and that the claimant had not permanently lost entitlement to SIBs because of no entitlement to SIBs for 12 consecutive months. The appellant (self-insured) submitted a request for review by the Appeals Panel, stating that it was not disputing that the claimant made a good faith effort to find work commensurate with his abilities during the fourth quarter qualifying period, but "vigorously disputes that claimant's unemployment was a direct result of his compensable injury." The claimant submitted a response, urging that the decision of the hearing officer be affirmed.

DECISION

Affirmed, as reformed.

The self-insured points out what are obviously minor typographical errors in the date of injury, and in the numbering of the conclusions of law. For the sake of clarity, we reform Conclusion of Law No. 3 to list the correct date of injury as _____, and we reform the second Conclusion of Law No. 3 by renumbering it as No. 4, and we reform Conclusion of Law No. 4 by renumbering it as No. 5.

The gist of the self-insured's argument is that the claimant currently has a disk herniation at L2-3 which started causing the claimant pain on May 13, 2000, and which is completely unrelated to the claimant's compensable injury. The self-insured argues that it is this intervening injury which precludes the claimant from obtaining employment at this time, that the claimant's unemployment is therefore not a direct result of his compensable injury, and that the claimant does not meet the requirements of Section 408.142(a)(2) for entitlement to SIBs. The hearing officer determined that the claimant's unemployment during the qualifying period for the fourth quarter was a direct result of the compensable injury.

It is well-established that a finding that a claimant's unemployment is a direct result of the impairment is "sufficiently supported by evidence that an injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury." Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies 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, an appellate reviewing tribunal, will not disturb a challenged factual finding of a hearing officer unless it is 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).

We are satisfied that the hearing officer's finding of direct result is sufficiently supported by the evidence that the claimant sustained a serious back injury in February, 1997, which required surgery and which has resulted in a 15% impairment rating. There was evidence before the hearing officer that the claimant has been seeing Dr. D for physical therapy two to three times each week ever since the claimant's December 1998 surgery. The claimant has never been given a full release to return to work. We note that the self-insured's required medical examination doctor stated on June 9, 2000, that the claimant "is capable of returning to light active work which does not require him to bend repetitively or to lift more than 10 pounds." This restriction certainly precludes the claimant from loading freight, the type of work he was doing at the time of the injury. Further, there is testimony from the claimant that he found sufficient work as a substitute teacher during the first through third, fifth, and sixth quarter qualifying periods that he was not entitled to SIBs for those quarters based on his earnings. The evidence that the claimant worked both before and after the _____, injury, at similar work that he was qualified to do, and he did so whenever it was available, shows that the intervening injury did not cancel out his unemployment from being a direct result of his impairment. We reiterate that the hearing officer's decision on direct result is fully supported by the evidence of record.

We affirm the decision and order of the hearing officer, as reformed.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge