

APPEAL NO. 011359
FILED JULY 30, 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 May 30, 2001. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fifth quarter. The appellant (carrier) appeals the hearing officer's determination, asserting that the claimant did not make a good faith effort to find employment and her underemployment is not a direct result of her compensable injury. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was entitled to fifth quarter SIBs. The carrier challenges the hearing officer's findings that the claimant returned to work in a position relatively equal to her ability to work and made a good faith job search each week of the qualifying period. Whether the claimant made a good faith effort to obtain employment commensurate with her ability to work under either theory is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 981547, decided August 21, 1998. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as trier of fact, resolves the conflicts and inconsistencies 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 hearing officer could infer from the medical evidence that the claimant was capable of working only a part-time job during the qualifying period. In view of the evidence that the claimant worked as a substitute teacher for a school district during the qualifying period, the hearing officer could find that the claimant returned to work in a position relatively equal to her ability to work.

With regard to the claimant's job search efforts, we have held that documentation is mandatory to establish a good faith job search, but need not be limited to the information on the Application for [SIBs] (TWCC-52) and can exist in other forms, such as memoranda, notes, copies of applications, or statements of persons with knowledge of the relevant facts. Texas Workers' Compensation Commission Appeal No. 001177, decided July 12, 2000. In view of the documentary evidence that the claimant volunteered at an elementary school throughout the qualifying period and the claimant's testimony that she did so in hopes of obtaining a full-time position with the school district, the hearing officer could find that the claimant made a good faith effort to find employment commensurate with her ability during the qualifying period for the fifth quarter.

As stated above, the carrier also asserts that the claimant's reduced earnings are not a direct result of her compensable injury. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) provides that "[a]n 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 she cannot reasonably perform the job she was doing at the time of her compensable injury. Texas Workers' Compensation Commission Appeal No. 001847, decided September 15, 2000. The evidence shows that the claimant has a 10-pound lifting restriction and that "she certainly is not capable of going back to the heavy type of work she was doing in construction and will not be able to do this in the future." The hearing officer's determination that the claimant is entitled to fifth quarter SIBs is not 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 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge