APPEAL NO. 011519
FILED AUGUST 16, 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 June 13, 2001. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the third, fourth, and seventh compensable quarters, but is not entitled to SIBs for the first and second compensable quarters. The appellant (carrier) urges that the hearing officer's determination, with regard to entitlement for the seventh compensable quarter, is not supported by sufficient credible evidence and is against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant. Since only the seventh quarter SIBs determination is appealed, the other determinations have become final. Section 410.169.

DECISION

Affirmed.

Section 408.142(a) states the requirements for SIBs eligibility as follows:

> An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:
>
> (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
>
> (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage [AWW] as a direct result of the employee's impairment;
>
> (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
>
> (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (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.

The carrier argues that during the seventh quarter qualifying period, which the parties stipulated began on October 25, 2000, and ended on January 23, 2001, the claimant did not work full-time hours for the entire period and, therefore, should not be entitled to SIBs. The

claimant testified that she was hired as a temporary employee and, subsequent to the end of the seventh quarter qualifying period, was laid off. The claimant provided verification of her work hours, documenting that between November 1, 2000, and January 3, 2001, she worked full time, or in excess of full-time hours. After January 3, the record reflects that the claimant worked four or more hours on five separate dates. The hearing officer found that the claimant earned less than 80% of her AWW as a direct result of her compensable injury and, that during the seventh quarter qualifying period, she returned to work in a position relatively equal to her ability to work.

We have previously recognized that the question of whether the employment is "relatively equal" is a question of fact for the hearing officer to decide, and that the focus of the inquiry is not on whether the wages are the same. In Texas Workers' Compensation Commission Appeal No. 001579, decided August 17, 2000, we specifically rejected the argument that a claimant must work in the relatively equal position during each week of the qualifying period in order to satisfy the good faith requirement of Rule 130.102(d)(1). Under the guidance of Appeal No. 001579, we find no merit in the contention that the hearing officer erred as a matter of law in determining that the claimant in this case satisfied the good faith requirement under Rule 130.102(d)(1) by returning to a job relatively equal to her ability to work.

We are satisfied that the record sufficiently supports the hearing officer's determination that the claimant returned to work in a position that was "relatively equal" to her ability to work in the qualifying period for the seventh quarter. 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 and we do not find it to be so in this case. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge