

APPEAL NO. 011595
FILED AUGUST 31, 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 June 14, 2001. The disputed issue was "What is the appropriate reduction of respondent's (claimant) impairment income benefits [IIBs] based on contribution from the earlier compensable injury?" The appellant (self-insured) appeals the hearing officer's decision that "Contribution for [IIBs] is ordered in the proportion of 12/27ths." No response was received from the claimant.

DECISION

The hearing officer's decision is affirmed.

Conflicting evidence was presented at the CCH with regard to the disputed issue. The self-insured contends that contribution for the earlier compensable injury should be 72% or 74%. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the conflicting evidence. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The self-insured states that contribution under Section 408.084 applies to IIBs and supplemental income benefits (SIBs). We agree that Section 408.084 applies to IIBs and SIBs and that those income benefits are reduced in one proportion for purposes of contribution. See Insurance Company of the State of Pennsylvania v. Moore, 43 S.W.3rd 77 (Tex. App.-Fort Worth 2001, no pet. h.); Texas Workers' Compensation Commission Appeal No. 94787, decided July 28, 1994. However, we cannot conclude that the hearing officer erred as a matter of law in addressing only the issue that was brought forward from the benefit review conference, especially in light of the fact that there is no indication that the self-insured complied in any way with any of the regulatory procedures for adding or amending an issue. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge