

APPEAL NO. 011850  
FILED SEPTEMBER 13, 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 July 11, 2001. The hearing officer determined that the appellant/cross-respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the sixth quarter. The claimant appeals the determinations on sufficiency grounds. The respondent/cross-appellant (carrier) filed a conditional cross-appeal, asserting that the claimant's unemployment during the qualifying period was not a direct result of her impairment. There is no response in the file from the claimant to the carrier's conditional appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to sixth quarter SIBs. Sections 408.142 and 408.143 provide, in part, that an employee continues to be entitled to SIBs after the first compensable quarter if the employee (1) has not returned to work or has earned less than 80 percent of her average weekly wage as a direct result of the impairment, and (2) has in good faith sought employment commensurate with her ability to work.

The claimant asserts that she had no ability to work and, therefore, did not make a job search during the qualifying period. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with her ability to work, if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that the claimant did not provide a narrative which specifically explains how her injury caused a total inability to work and that other records showed that the claimant is able to return to work. 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, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In view of the evidence and applying our standard of review, we find sufficient evidence to support the hearing officer's findings.

The carrier asserts that the claimant's unemployment during the qualifying period was not a direct result of her impairment. We have noted that a finding that the claimant's unemployment or underemployment 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. In this instance, there is evidence from which the hearing officer could determine that the claimant's injury resulted in permanent impairment and that, as a result thereof, the claimant could no longer reasonably perform the type of work she was doing at the time of her injury. The hearing officer's determination that the claimant is not entitled to 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, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ASSOCIATION CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**HAROLD FISHER, PRESIDENT  
OR  
DANNY SCHAFIN, SECRETARY  
OR  
EVELYN HICKY, TREASURER  
AT  
3420 EXECUTIVE CENTER DRIVE, SUITE 200  
AUSTIN, TEXAS 78766.**

---

Gary L. Kilgore  
Appeals Judge

CONCUR:

---

Thomas A. Knapp  
Appeals Judge

---

Philip F. O'Neill  
Appeals Judge