

APPEAL NO. 012013  
FILED OCTOBER 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 August 7, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the sixth, seventh, and eighth quarters, but that she was entitled to SIBs for the ninth quarter. The appellant (carrier) appealed the determination as to eligibility for the ninth quarter, and there is no response from the claimant. There is no appeal of the determination that the claimant was not entitled to SIBs for the sixth, seventh and eighth quarters and this decision has become final.

DECISION

Affirmed.

On appeal, the sole issue before us is the hearing officer's determination that the claimant is eligible for SIBs for the ninth quarter. The qualifying period for the ninth quarter of SIBs was from January 4, 2001, through April 4, 2001. Prior to March 15, 2001, the claimant was working 20 hours per week (4 hours per day and 5 days per week) and receiving \$200.00 per month as a "private health aide nurse." On March 15, 2001, the claimant's position became full-time (8 hours per day and 5 days per week), and she began receiving \$400.00 per month.

The carrier appeals the hearing officer's determination that the claimant made a good faith search for employment commensurate with her ability to work. The hearing officer did not err in determining that the claimant had satisfied the good faith requirement. 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 contends that the hearing officer erred in determining that the job the claimant worked during the qualifying period was "relatively equal" because of the wage she was being paid, and the fact that she did not search for work each week during the qualifying period. We find no merit in that assertion. The question of whether a job is relatively equal is a question of fact for the hearing officer and the focus of the inquiry is on the hours worked and the ability to work, not on the wages paid. Texas Workers' Compensation Appeal No. 010605, decided May 1, 2001; Texas Workers' Compensation Appeal No. 000616, decided April 26, 2000. In the instant case, the hearing officer determined that the claimant returned to work within her restrictions and that determination is supported by sufficient evidence and is not against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In Texas Workers' Compensation Commission Appeal No. 001579, decided August 7, 2000, we specifically rejected the argument that a claimant must work in a relatively equal position during each week of the qualifying period

in order to satisfy the good faith requirement of Rule 130.102(d)(1). Where, as here, the claimant had returned to work in a job relatively equal to her ability to work within the quarter, she was not also required to conduct a job search in accordance with Rule 130.102(e) in order to satisfy the good faith requirement.

The hearing officer determined that the claimant's underemployment was a direct result of the impairment caused by the compensable injury. The carrier challenges the hearing officer's direct result determination. 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. The record establishes that the claimant has restrictions, and that she cannot perform the job she held at the time of her compensable injury. That evidence provides sufficient support for the determination that the claimant has reduced earnings for the ninth quarter qualifying period as a direct result of her impairment from the compensable injury.

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

**CT CORPORATION SYSTEMS  
350 N. ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge