APPEAL NO. 012167
FILED OCTOBER 11, 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 July 31, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter because the claimant's unemployment was not a direct result of his compensable impairment.

The claimant appealed, contending that he had not been able to return to his full duties after his compensable injury, that he remained under a doctor's care for his compensable injury, and that he continued to have restrictions because of the compensable injury. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The claimant had been employed as a master plumber/maintenance man by the self-insured, and it is undisputed that the claimant sustained a compensable low back injury on _____, when he stepped out of his truck. The claimant had spinal surgery in the form of a left L3-4 hemilaminectomy, foraminotomy, and diskectomy on February 8, 1999. The claimant was able to return to work with the self-insured on March 22, 1999, initially at light duty and subsequently at full duty. There is some dispute whether the claimant was truly working at full duty because he was not working overtime, but the testimony in general was that the self-insured accommodated the claimant by providing an assistant to perform the heavier labor and continued to pay the claimant his full monthly base pay. The medical records indicate that the claimant had a temporary flare-up of his back condition in August 1999 and that the claimant worked under restrictions of no "[e]xtensive bending or stooping, lifting over 10 pounds, climbing ladders or placing himself in any type of awkward position." The claimant continued to work under these restrictions until December 7, 1999, when he suffered a stroke. The claimant was in the hospital due to the stroke until December 13, 1999. The claimant has not returned to work. A letter from the Texas Rehabilitation Commission (TRC) indicates that they are unable to assist the claimant because his "disability [is] too severe."

Complicating the claimant's situation is that the claimant is 57 years old and does not read or write. In addition, the stroke has resulted in a slight speech impediment.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(b) provides that an injured employee who has an impairment rating (IR) of 15% or greater and who has not commuted any impairment income benefits (IIBs) is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the

compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. Although the hearing officer made no findings on the good faith element, that requirement does not appear to be seriously disputed (the claimant made 27 job contacts during the qualifying period).

The parties stipulated to the compensable injury, a 19% IR, that IIBs were not commuted, and that the qualifying period was from February 1, 2001, through May 2, 2001. At issue is whether the claimant's unemployment was a direct result of the impairment from the compensable injury. The claimant contends that it was, citing that he is still under a doctor's care for his back injury, that he continues to take medication for that injury, and that he continued to have restrictions from the compensable injury. The hearing officer noted that the claimant's efforts to return to work were evident and admirable but went on to comment:

> However, Claimant had returned to work with the Employer after his compensable injury in January, 1999 in a position that was relatively equal to his ability to work. The evidence was clear that Claimant could have continued to work at the Employer, at his pre-injury basic wage rate, indefinitely. The evidence is also clear that the only reason that Claimant ceased working at the Employer was because of the stroke in December, 1999. And it is that stroke which is the current direct cause of Claimant's inability to obtain employment.

We hold that the hearing officer correctly applied the 1989 Act and Rule 130.102, that his decision is supported by the evidence, and that the decision 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).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(A SELF-INSURED) THROUGH EAST TEXAS EDUCATIONAL ASSOCIATES** and the name and address of its registered agent for service of process is

DR. F. LARRY SULLIVAN, SUPERINTENDENT
4241 SUMMERHILL ROAD
TEXARKANA, TEXAS 75503-2733.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge