

APPEAL NO. 012213  
FILED NOVEMBER 7, 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 17, 2001. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 15th quarter. The appellant (carrier) appealed the determinations on sufficiency grounds. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was entitled to 15th 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 his average weekly wage as a direct result of the impairment, and (2) has in good faith sought employment commensurate with his ability to work.

The carrier asserts the claimant's underemployment during the qualifying period was not a direct result of his 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 the 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 work as a mechanic.

The carrier also asserts that the claimant's employment was not commensurate with his ability to work during the qualifying period for the 15<sup>th</sup> quarter, and he did not make a good faith effort to obtain employment commensurate with his ability to work. The carrier complains about the hearing officer's not having made an express finding that the claimant had returned to work in a job relatively equal to his ability to work. However, that finding can be implied in that a review of the hearing officer's decision clearly demonstrates that he found that the claimant satisfied the good faith requirement under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)). The question of whether the claimant returned to work in a position relatively equal to his ability to work is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 011787, decided September 21, 2001. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence and, as the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence, including the medical evidence, and determines what facts the evidence has established. Texas

Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the medical evidence from the claimant's treating doctor, the hearing officer could determine that the claimant had the ability to work part-time from February 27, 2001 through May 9, 2001, and could work full-time from May 10, 2001, through May 25, 2001. The hearing officer could further determine from the evidence that the claimant worked part-time commensurate with his abilities through May 9, 2001, and obtained full-time employment when he was released for such employment by his treating doctor. The hearing officer's good faith determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination, or the determination that the claimant is entitled to SIBs for the 15<sup>th</sup> quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 N. ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge