

APPEAL NO. 013107
FILED JANUARY 24, 2002

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 November 26, 2001. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (carrier) appealed. No response was received from the claimant.

DECISION

The hearing officer's decision is affirmed.

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). The parties stipulated that the claimant sustained a compensable injury, that the claimant has an impairment rating of 15%, and that the claimant did not commute impairment income benefits. The SIBs criteria in issue for the qualifying period for the fourth quarter are whether the claimant earned less than 80% of her average weekly wage (AWW) as a direct result of the impairment from her compensable injury, and whether the claimant made a good faith effort to obtain employment commensurate with her ability to work. Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's AWW 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. 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 claimant's treating doctor released her to return to work for four to six hours a day with specified restrictions on the amount of standing, sitting, kneeling, bending, and other activities she can perform due to her medical condition resulting from her compensable back injury sustained while she was working as a mailroom clerk. It is undisputed that the claimant worked throughout the relevant qualifying period in an assembly-type job that met the treating doctor's restrictions. The evidence reflects that the claimant earned less than 80% of her preinjury AWW during the relevant qualifying period and that she did not look for other jobs during the relevant qualifying period. The hearing officer found that the claimant worked in a position which was relatively equal to her ability to work during the qualifying period for the fourth quarter, that the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the fourth quarter, that the claimant earned less than 80% of her AWW during the qualifying period for the fourth quarter, and that the claimant's underemployment during the qualifying period for the fourth quarter was a direct result of her impairment from the compensable injury. The hearing officer concluded that the claimant is entitled to SIBs for the fourth quarter.

The carrier argues that the claimant's "unique abilities" allow her to earn a higher wage scale, and that just because the work that the claimant performs fits within her restrictions, does not mean that the work is commensurate with her ability to work. In Texas Workers' Compensation Commission Appeal No. 011561, decided August 16, 2001, the Appeals Panel held that the weekly job search requirement of Rule 130.102(e) is not applicable in cases where the claimant satisfies the good faith requirement under Rule 130.102(d)(1) by working in a job relatively equal to the claimant's ability to work in the qualifying period. In Texas Workers' Compensation Commission Appeal No. 010605, decided May 1, 2001, the Appeals Panel held that the question of whether a job is relatively equal to the claimant's ability to work is a question of fact for the hearing officer and that the focus of the inquiry is on the hours worked and the ability to work, not on the wages paid.

We conclude that the appealed findings of fact and determination of the hearing officer are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

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

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge