

APPEAL NO. 020024  
FILED FEBRUARY 27, 2002

Following a contested case hearing held on December 6, 2001, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 8th, 9th, 10th, and 11th quarters. The appellant (carrier) contends on appeal that these determinations are against the great weight of the evidence because, during the respective qualifying periods, the claimant had the ability to perform work paying higher wages than the full-time job he performed. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, while working as a carpenter's helper on a construction project, he was hammering a nail into a board and a piece flew into his left eye; that he underwent surgery on the eye including the removal of the lens; that he was released to return to work with restrictions in November 1997; that he continued to experience eye pain, cramping, and watering and also had problems with balance and depth perception and thus could not continue working at construction sites; and that he worked at various temporary jobs for a temporary agency. He further stated that sometime in \_\_\_\_\_, his eye was reinjured when debris blew into it while he was working at a job painting signs and that he underwent additional surgery on the eye in \_\_\_\_\_ and his restrictions were reinstated. Dr. M wrote on November 17, 1997, that the claimant's traumatic eye injury left him aphakic (natural lens had to be removed) and with corneal irregularity and a laceration and that he required a rigid contact lens. Dr. B wrote on February 21, 2000, that the claimant's partial vision loss resulted in decreased depth perception making distance judging more difficult; that he has been unable to tolerate the contact lens; that he complains of double vision and "star bursts"; and that he needs additional corrective surgery and "until then" should avoid climbing or being at any significant heights. The carrier urges error in the hearing officer's finding that these restrictions were applicable throughout the qualifying periods, given the qualifying "until then" language in Dr. B's report. However, the claimant indicated that, based on what the doctor told him, these restrictions were permanent. The hearing officer could reasonably infer from all of the medical evidence and the entirety of the claimant's testimony that he was advised not to engage in work involving climbing and heights due to his vision and depth perception losses and that it was reasonable for him not to further pursue employment in the construction industry.

The 8th quarter qualifying period began on September 8, 2000. The claimant testified that in January 2000 he commenced full-time employment as a salesperson for a print shop; that he was initially compensated with commissions but soon was made a

salaried employee; that he has worked a 40-hour week ever since; and that he is paid \$5.15 per hour and has been promised a raise next year. He introduced a written employment contract with the employer, dated December 23, 2000, stating that the term of the claimant's employment was to be three years. The carrier introduced a copy of a prior decision and order issued by another hearing officer which determined that the claimant was not entitled to SIBs for the 3rd, 4th, and 5th quarters and a copy of Texas Workers' Compensation Commission Appeal No. 001527, decided August 16, 2000, which affirmed that decision and order. According to the summary of the evidence in the Appeals Panel decision, the claimant, during the qualifying periods then at issue, worked at several jobs for short periods and made some job searches. However, during the four qualifying periods in the case we here consider, the claimant worked at a full-time job. While this evidence is of historical interest, "each quarter is to be considered on its own merit" and hearing officers are not required to follow prior decisions when considering SIBs for a different quarter. Texas Workers' Compensation Commission Appeal No. 951702, decided November 27, 1995.

The claimant's entitlement to SIBs for the quarters at issue are governed by the provisions of Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102)). Concerning the requirement that the claimant's unemployment or underemployment be "a direct result" of his impairment from the compensable injury (Section 408.142(a)(2) and Rule 130.102(b)(1)) and the hearing officer's findings that the claimant met this requirement during the qualifying periods at issue, the carrier maintains, in effect, that the great weight of the evidence shows that the sole basis for the claimant's underemployment was his limiting himself to his print shop job and not looking for a higher-paying job in the construction industry which would be within his sole existing restriction of wearing safety glasses. As for the requirement that the claimant have made a good faith effort to obtain employment commensurate with his ability to work (Section 408.142(a)(4) and Rule 130.102(b)(2)) and the hearing officer's finding that he did so, the carrier contends, in effect, that the great weight of the evidence shows that the claimant had not returned to work in a position relatively equal to his ability to work because his only medical restriction was wearing safety glasses so he could have returned to the construction industry. See Rule 130.102(d)(1).

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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the challenged findings and conclusions are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The decision and order of the hearing officer are affirmed.

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

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

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Robert W. Potts  
Appeals Judge