

APPEAL NO. 021734
FILED AUGUST 21, 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 June 19, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter but is entitled to SIBs for the third quarter. The appellant (carrier) appealed the determination of entitlement to SIBs for the third quarter. The appeals file did not contain a response from the claimant. The claimant also did not appeal the determination that she is not entitled to SIBs for the second quarter.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement on November 3, 2000, with an impairment rating of 15%; that the claimant did not commute any portion of the impairment income benefits; that the third quarter for SIBs was from March 16 through June 14, 2002; and that the qualifying period for the third quarter was from December 2, 2001, through March 2, 2002. 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 carrier disputed the hearing officer's findings that the claimant's employment during the qualifying period for the third quarter of SIBs is consistent with her physical restrictions and is commensurate with the claimant's ability to work; that the job offered to the claimant by the employer was not geographically accessible to the claimant and it was not a bona fide offer of employment; and that the claimant's underemployment during the qualifying period for the third quarter of SIBs was a direct result of her impairment.

Whether a claimant has made a good faith effort (pursuant to Rule 130.102(d)) to obtain employment is a question of fact for the hearing officer to resolve. 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 in the same capacity as she did prior to the compensable injury. The hearing officer's finding that the claimant is no longer able to work at jobs which

require physical abilities which are substantially equal to those required by her preinjury employment was not appealed by the carrier.

The question of whether the claimant returned to work in a position relatively equal to her 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).

We look to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(e) (Rule 129.6(e)) as guidance to determine whether an offered position is "geographically accessible" within the meaning of Section 408.144(c). Rule 129.6(e) states that in evaluating geographic accessibility the carrier should consider the affect of the claimant's physical limitations on her ability to travel, the distance the claimant will have to travel, and the availability of transportation. The evidence reflected that the claimant is limited to driving for no more than twenty minutes at a time and that the location of the job offered was eighty miles from her home. The claimant also testified that the engine to her car "blew up" in April 2001 and she has not had transportation available to her since that time. In light of this evidence, we cannot agree that the hearing officer erred in determining that the offered position was not geographically accessible within the meaning of Section 408.144(c).

Upon a full review of the record, we conclude that the hearing officer's determination that the claimant is entitled to SIBs for the third quarter is supported by the evidence, and that it 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); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

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

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge