

APPEAL NO. 021866  
FILED SEPTEMBER 11, 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 21, 2002. The hearing officer determined that the respondent (claimant herein) was entitled to supplemental income benefits (SIBs) for the third and fourth quarters, but that the appellant (carrier herein) was relieved of liability for these benefits because the claimant failed to timely file an Application for [SIBs] (TWCC-52) for these quarters. Neither party appealed these determinations. The hearing officer also determined that the claimant was entitled to SIBs for the fifth quarter. The carrier appeals this determination, arguing that the hearing officer erred in finding that the carrier waived its right to contest entitlement to SIBs for the fifth quarter by failing to timely request a benefit review conference (BRC) and that hearing officer erred in finding that the claimant's unemployment was a direct result of his impairment from the compensable injury. There is no response to the carrier's request for review from the claimant in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We note at the outset that the carrier challenges some of the factual findings of the hearing as being contrary to the evidence. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the factual findings in the hearing officer's decision which were challenged by the carrier.

The carrier argues that the hearing officer's finding that the claimant's unemployment during the qualifying period was not a direct result of his impairment from the compensable injury. We have stated that a finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an 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. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. This hearing officer finds that this is the case here and that finding supports her conclusion that the claimant is entitled to SIBs for the fifth compensable quarter.

The carrier argues that the hearing officer erred in finding that the carrier waived its right to contest the claimant's entitlement to SIBs because the carrier failed to timely request a BRC. The carrier admits that it did not timely file a request for a BRC, which normally would result in it waiving its right to contest entitlement to SIBs. The carrier argues that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.108(e) (Rule 130.108(e)) relieved it of the obligation to timely dispute entitlement to fifth quarter SIBs because it did not pay SIBs for the fourth quarter. However, we held in Texas Workers' Compensation Commission Appeal No. 020302, decided March 26, 2002, that Rule 130.108(e) would not operate to relieve the carrier of its duty to request a BRC where, as here, the issue of entitlement to the prior quarter of SIBs was ongoing at the time the carrier should have requested the BRC. In any case, the issue would not require reversal since we are affirming the determination of the hearing officer that the claimant was entitled to SIBs for the fifth compensable quarter. See Texas Workers' Compensation Commission Appeal No. 992759, decided January 18, 2000.

The decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge