

APPEAL NO. 022018
FILED SEPTEMBER 17, 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 July 5, 2002. The hearing officer resolved the disputed issue by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) corresponding to the 16th compensable quarter. On appeal, the claimant contends that this determination is against the great weight and preponderance of the evidence. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs if upon the expiration of the impairment income benefits (IIBs) period the employee has: (1) an impairment rating of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage (AWW) as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) attempted in good faith to obtain employment commensurate with the employee's ability to work. In the present case, the hearing officer determined that the claimant did not establish that he earned less than 80% of his preinjury AWW, or that his failure to earn less than 80% of his preinjury AWW resulted from his impairment. The hearing officer concluded that the claimant is not entitled to SIBs for the 16th compensable quarter.

On appeal, the claimant contends that the hearing officer committed "gross error" in making a finding of fact relating to the claimant's failure to establish his gross earnings for the 16th quarter. Essentially, the claimant argues that by focusing on his earnings during the 16th quarter qualifying period, the hearing officer failed to consider the actual issue presented; that being SIBs entitlement. We disagree. A claimant who has returned to work during the qualifying period in question must establish, in addition to the other requirements provided for in the statute, that he or she earned less than 80% of the preinjury AWW as a direct result of the impairment. In the present case, as the hearing officer correctly points out, the claimant's earnings during the 16th quarter qualifying period could not be determined because the claimant failed to include the value of the fringe benefits he received during the period, yet the preinjury AWW included the same type of fringe benefits. The hearing officer would necessarily need to be concerned with the amount of the claimant's earnings during the 16th quarter qualifying period in order to determine if those earnings were less than 80% of the preinjury AWW and we perceive no error in his doing so.

Despite the fact that the claimant did not establish the amount of his earnings during the qualifying period in question, the hearing officer determined that even if the claimant had earned less than 80% of his preinjury AWW, such deficit was not a direct

result of the impairment from the compensable injury. Whether the claimant's unemployment was a direct result of his impairment was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. Section 410.165(a) provides that the 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 to 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). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, 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). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS 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.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judge