

APPEAL NO. 022533  
FILED OCTOBER 31, 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 September 13, 2002. The hearing officer determined that the compensable injury sustained by the appellant/cross-respondent (claimant) on \_\_\_\_\_, extends to and includes fibromyalgia and that she is not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appeals the SIBs determination. The respondent/cross-appellant (carrier) appeals the extent-of-injury determination and responds to the claimant's appeal, urging affirmance of the SIBs determination. The claimant responds to the carrier's appeal again urging reversal of the decision.

DECISION

We affirm.

**EXTENT OF INJURY**

The hearing officer did not err in determining that the claimant's compensable injury extends to and includes fibromyalgia. Extent of injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Generally, lay testimony is sufficient to establish causation where, based upon common knowledge, a fact finder could understand a causal connection between the employment and the injury, but expert testimony may be required where such common knowledge does not exist. Texas Workers' Compensation Commission Appeal No. 941464, decided January 9, 1995. In the present case, the hearing officer relied on the medical evidence submitted by the claimant in determining that her compensable injury includes fibromyalgia. Although the carrier presented evidence to the contrary, 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). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). We conclude that the hearing officer's findings of fact in this regard 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).

**SIBs**

The claimant contends that the hearing officer's finding of fact that her unemployment during the qualifying period in question was a direct result of her compensable injury is in conflict with the finding that she did not make a good faith effort to obtain employment commensurate with her ability to work. We do not agree. Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

The “direct result” and “good faith” requirements are distinctly different and each must be satisfied in order to establish SIBs entitlement. We do not agree. The hearing officer’s direct result finding conflicts with the findings that the claimant did not provide an adequate narrative, that another record shows that the claimant had some ability to work, and that the claimant had some ability to work. The fact that the hearing officer found that the impairment was at least a cause of the claimant’s unemployment does not mean that the claimant also had no ability to work.

The claimant contends that she had no ability to work and that she was enrolled in, and satisfactorily participating in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission [TRC] during the qualifying period in question. Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)), effective January 31, 1999, provides that an employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

- (1) has returned to work in a position which is relatively equal to the injured employee's ability to work;
- (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period;
- (3) has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;

- (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or
- (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

The hearing officer determined that the claimant did not satisfy the good faith requirement as provided for in Rule 130.102(d)(2), (3), or (4). Nothing in our review of the record indicates that the hearing officer's SIBs determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

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

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

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Robert W. Potts  
Appeals Judge