

APPEAL NO. 022884
FILED DECEMBER 20, 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 October 15, 2002. The hearing officer determined that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the 8th and 10th quarters because he did not prove direct result and he failed to make a good faith effort to seek employment during the respective qualifying periods. The hearing officer determined that the claimant is entitled to SIBs for the 11th quarter. The appellant (carrier) appealed the hearing officer's determination that the claimant is entitled to SIBs for the 11th quarter, asserting that the claimant failed to prove direct result and that he did not search for work every week during the relevant qualifying period. The carrier also conditionally appealed other of the hearing officer's determinations to preserve its right to judicial review. As the claimant has not filed an appeal, those determinations will not be discussed. The claimant responded, urging affirmance of the hearing officer's decision and order. The hearing officer's determination that the claimant is not entitled to SIBs for the 8th and 10th quarters has not been appealed and has become final. Section 410.169.

DECISION

We affirm in part and reverse and render in part.

The hearing officer did not err in determining that the claimant's impairment from his _____, compensable injury was a cause of reduced earnings (direct result) during the qualifying period for the 11th quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) defines direct result. If an injured employee has earned less than 80% of his average weekly wage as a direct result of the impairment from the compensable injury, the injured employee has satisfied this requirement for entitlement to SIBs. Whether or not the claimant's impairment from the compensable injury was a direct result of his underemployment or unemployment was a question of fact for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's determination on this issue 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, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer erred in determining that the claimant is entitled to SIBs for the 11th quarter. In the instant case, it is undisputed that the claimant had not returned to work. The hearing officer determined that the claimant was not satisfactorily participating in any full-time rehabilitation program sponsored by the Texas Rehabilitation Commission and that determination has not been appealed. The claimant testified that he had a light-duty capacity to work during the relevant qualifying period. The hearing officer determined that the claimant did make a good faith effort to

seek employment every week of the relevant qualifying period. We find this last determination to be against the great weight and preponderance of the evidence.

The claimant submitted into evidence an Application for [SIBs] (TWCC-52) for the 11th quarter and numerous Job Search Sheets, which he admitted were not attached to the TWCC-52. In the discussion portion of the hearing officer's decision and order, he states, "The supplemental job searches sheets are not believed to be probative in that there is no indication that they were prepared near the time of the event, and there is no persuasive reason that the information, if accurate, could not have been included in the TWCC-52s." It appears from this statement that the hearing officer relied only on the claimant's TWCC-52 in reaching his conclusion that there was a weekly job search. The claimant's TWCC-52 for the 11th quarter shows that the claimant failed to document a job search during weeks 4 and 13 of the qualifying period and no explanation was given for the failure to document a job search during those weeks. We note that even had the hearing officer given weight to the supplements, there still would be no documented job search during the 4th week. Because we find that the claimant did not document a job search every week of the qualifying period for the 11th quarter, we reverse the hearing officer's decision that the claimant is entitled to SIBs for the 11th quarter, and render a new decision that the claimant is not entitled to SIBs for the 11th quarter.

We affirm that part of the hearing officer's decision that determined that the claimant's unemployment or underemployment during the qualifying period for the 11th quarter was a direct result of his compensable injury. We reverse that part of the hearing officer's decision that determined that the claimant is entitled to SIBs for the 11th quarter and we render a new decision that the claimant is not entitled to SIBs for the 11th quarter.

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

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

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge