

APPEAL NO. 023244
FILED FEBRUARY 12, 2003

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 December 3, 2002. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh quarter. The appellant (carrier) appealed, arguing that the hearing officer impermissibly based his finding on the hours that the claimant expected to work rather than the hours the claimant worked; that the hearing officer impermissibly based his finding on the hours the claimant may be able to work at a future date; and that the hearing officer impermissibly based his finding on a supervisor's assessment of the claimant's ability to work. The appeal file does not contain a response from the claimant.

DECISION

Reversed and a new decision rendered that the claimant is not entitled to SIBs for the seventh quarter.

The parties stipulated that the claimant sustained a compensable injury on _____; that she was assigned an impairment rating of 15% or greater; that she did not commute her impairment income benefits; that the qualifying period for the seventh quarter ran from June 23 to September 21, 2002; and that the seventh quarter ran from October 5, 2002, to January 3, 2003. It is undisputed that for the first six weeks of the qualifying period, the claimant worked part time for a painting contractor and that she continued to look for other employment during that period. In the seventh week of the qualifying period the claimant began working as a dishwasher in a restaurant. The claimant worked between 20 and 30 hours at the restaurant. Initially, the claimant worked three or four days a week and then at, her request, she began working five days a week. The claimant averaged between four and six hours per day. On September 28, 2001, the claimant's treating doctor, Dr. C, released the claimant to "full time work" with the restriction that she alternate between sitting and standing, a 50-pound pushing/pulling restriction, an occasional climbing/crawling restriction, and a 20-pound lifting/carrying restriction. There were no limits on the number of hours per week the claimant could work imposed by Dr. C.

The hearing officer determined that the claimant was entitled to SIBs for the seventh quarter because she had returned to work in a job relatively equal to her ability to work in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)). He determined that the claimant was restricted to part-time work based upon her testimony and the testimony from the claimant's supervisor at the restaurant that she had observed the claimant working and she "believed that the number of hours the Claimant was scheduled for, especially if the restaurant stayed open until 10:00 pm, were the maximum hours that were commensurate with the

Claimant's ability to work." In light of the evidence from the claimant's treating doctor that the claimant was released to full-time work, with no hour restrictions, we believe the determination that the claimant had returned to work in a job relatively equal to her ability to work is against the great weight of the evidence. Accordingly, we reverse that determination that the claimant satisfied the good faith requirement under Rule 130.102(d)(1) and render a new determination that the claimant did not satisfy the good faith requirement and is, therefore, not entitled to SIBs for the seventh quarter.

The hearing officer's determination that the claimant is entitled to SIBs for the seventh quarter is reversed and a new decision rendered that she is not entitled to those benefits.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge