

APPEAL NO. 030005  
FILED FEBRUARY 10, 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 November 18, 2002. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh quarter. The appellant (carrier) appealed, arguing that the hearing officer's determination was supported by insufficient evidence, or alternatively, contrary to the great weight and preponderance of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative requirements for SIBs. The parties stipulated that the qualifying period for the seventh quarter started May 25 and ended August 23, 2002, and that the seventh quarter started September 6 and ended December 5, 2002.

The carrier asserts that the claimant's underemployment during the qualifying period was not a direct result of his impairment. We have noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment is sufficiently supported by evidence if the injured employee sustained a serious 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. 960028, decided February 15, 1996. In this instance, there is evidence from which the hearing officer could determine that the claimant's injury resulted in permanent impairment and that, as a result thereof, the claimant could no longer reasonably work as a pipe fitter's helper.

The carrier also asserts that the claimant's employment was not commensurate with his ability to work during the qualifying period for the seventh quarter, and that he did not make a good faith effort to obtain employment commensurate with his ability to work. The question of whether the claimant returned to work in a position relatively equal to his ability to work is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 011787, decided September 21, 2001. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence and, as the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence, including the medical evidence, and determines what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In view of the medical evidence from the claimant's treating doctor and the results of the functional capacity evaluation, the hearing officer could determine that the claimant's job was relatively

equal to his ability to work during the qualifying period for the seventh quarter. The hearing officer's good faith determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination, or the determination that the claimant is entitled to SIBs for the seventh quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**GARY SUDOL**  
**9330 LBJ FREEWAY, SUITE 1200**  
**DALLAS, TEXAS 75243.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Chris Cowan  
Appeals Judge