

APPEAL NO. 030112
FILED MARCH 7, 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 26, 2002. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. Appellant (carrier) appealed the determinations regarding good faith, direct result, and SIBs entitlement on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Claimant testified that he was injured while working at a heavy-duty job making pipe for his former employer. Claimant said he underwent fusion surgery in November of 2000. Claimant testified that during the qualifying period, he worked 40 hours per week for the (Employer A) as a maintenance worker. Claimant began that job a few months before the qualifying period began. Claimant testified that he did not think that he could perform his job with his former employer and that he has been told that his lifting restrictions are permanent. Claimant said he made \$12.29 per hour working for his former employer and that he made \$8.72 per hour during the qualifying period.

Carrier contends that claimant was capable of going back to his former job and that he was not in good faith because he did not do so. Carrier also contends that the job claimant worked during the qualifying period was not relatively equal to his ability to work because he did not work overtime like he did at his former job. However, the hearing officer found that the work done by claimant was within the treating doctor's restrictions. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) requires only a finding that an injured worker has returned to work in a position "relatively equal" to his ability to work; no minimum hours or pay is required and the determination of what ability a claimant has and whether the employment is relatively equal to this ability are fact determinations for the hearing officer. Texas Workers' Compensation Commission Appeal No. 020103, decided February 27, 2002. We perceive no error. Carrier asserts that claimant was still required to look for work every week of the qualifying period, but he was not because he had returned to work relatively equal to his ability to work. See Texas Workers' Compensation Commission Appeal No. 012013, decided October 16, 2001.

Carrier contends that claimant was not in good faith because he did not cooperate with carrier's vocational counselor. However, this was only one factor for the hearing officer to consider in making his determinations regarding good faith.

Carrier asserts that claimant's underemployment was not a direct result of his impairment. Carrier asserts that claimant did not have any work restrictions. However,

the hearing officer could find from the evidence that claimant did have work restrictions. Carrier asserts that Dr. C did not explain his restrictions, but such an explanation is not required. A direct result determination is sufficiently supported if the record establishes that the claimant sustained a serious injury with lasting effects such that she cannot reasonably perform the job she was doing at the time of her compensable injury. That evidence provides sufficient support for the determination that the claimant has reduced earnings during the qualifying period as a direct result of his impairment. Appeal No. 012013, *supra*.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not 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).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TX 75063.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge