

APPEAL NO. 030335
FILED MARCH 25, 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 January 27, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter. The appellant (carrier) appeals the determinations, asserting that the claimant did not satisfy the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to fifth quarter SIBs. Section 408.142 and Rule 130.102 establish the requirements for entitlement to SIBs. At issue was whether the claimant's underemployment was a direct result of the impairment from the compensable injury pursuant to Rule 130.102(b)(1) and whether she satisfied the good faith criteria by returning to work in a position relatively equal to her ability to work during the qualifying period. Rule 130.102(d)(1). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination 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 (Tex. 1986).

Notwithstanding the above, the carrier contends that the claimant is not entitled to fifth quarter SIBs because she did not also look for work each week of the qualifying period nor register with the Texas Rehabilitation Commission (TRC) and Texas Workforce Commission during the qualifying period. We have said that a claimant, who returns to work in a position relatively equal to her ability to work *during* the qualifying period, does not also have to show that she looked for work each week or participated in a TRC program. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000.

The carrier also contends that the claimant is not entitled to fifth quarter SIBs because she earned more than 80 percent of her average weekly wage during the qualifying period. We note, however, that the carrier stipulated at the hearing that the "Claimant's earnings during the fifth supplemental income benefits qualifying period were less than 80 percent of her average weekly wage." Accordingly, we find no basis to reverse the hearing officer's determination.

The decision and order of the hearing officer are affirmed.

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

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

Edward Vilano
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A Knapp
Appeals Judge