APPEAL NO. 030494
FILED APRIL 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 (CCH) was held on February 4, 2003. The hearing officer determined that the appellant/cross-respondent's (claimant herein) compensable cervical spine injury of _____, extends to include the disc herniation at C4-5, and that the claimant is not entitled to supplemental income benefits (SIBs) for the third and fourth quarters.

The claimant appeals the SIBs determinations, citing exhibits which were not admitted or dealt with possible disability issues. The respondent/cross-appellant (self-insured herein) appealed the extent-of-injury issue, asserting that the C4-5 herniation was due to an intervening motor vehicle accident (MVA). Both parties responded to the other party's appeal.

DECISION

Affirmed on all issues.

The claimant, a school bus driver, sustained a compensable cervical injury on _____, in a MVA. The claimant had cervical surgery at the C5-6 and C6-7 levels on May 3, 1999. The claimant testified that she continued to experience significant symptoms. A CT scan of August 16, 2000, showed a posterior annular tear at C3-4. The claimant was released to return to limited duty with restrictions in December 2000. On April 27, 2001, the claimant was involved in a nonwork-related MVA. That MVA resulted in third-party litigation, which resulted in a settlement. The self-insured contends that the herniation at C4-5 was due to the intervening April 2001 MVA. The claimant contends that the self-insured had the burden to prove the second 2001 MVA was the sole cause of the claimant's C4-5 herniation. The self-insured contends that the cause of the claimant's stipulated unemployment on the SIBs issue was not a direct result of the compensable impairment. The claimant argued to the contrary. The evidence at the CCH dealt principally with the extent-of-injury issue with only passing reference to the SIBs issues.

On the extent-of-injury issue, the evidence was in conflict and extent-of-injury matters are usually factual issues within the province of the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We hold the hearing officer's decision to be supported by the evidence.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Contrary to the self-insured's argument, the hearing officer found that, during the qualifying periods for the third and fourth quarters, the claimant's unemployment was a direct result of the impairment from the compensable injury. (*See* Section 408.142(a)(2) and Rule 130.102(b)(1)). That determination has not been appealed. The hearing officer, however, also found that during the applicable qualifying periods the claimant "failed to establish . . . that she had a total inability to perform any work of any kind" and that the claimant therefore "did not make a good faith effort to obtain employment commensurate with her ability to work." *See* Section 408.142(a)(4) and Rule 130.102(b)(2). The claimant appealed that determination citing Rule 130.102(d)(4).

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The claimant, in her appeal, references some exhibits which had been excluded, and otherwise cites reports which deal more with the clinical aspects of the extent-of-injury issue rather than an ability to return to work in any capacity. One referenced report dated August 23, 2002 (the stipulated qualifying periods were from May 4 through November 2, 2002) comments on the claimant's impairment rating and states "On December 5, 2000 [the claimant] was release[d] back to work with restrictions." Other reports during the relevant time frames dealt with whether the compensable injury "was a producing cause of [the claimant's] current condition." The reports in evidence did not meet the requirements of Rule 130.102(d)(4).

We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

BB
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Roy L. Warren
Appeals Judge