

APPEAL NO. 030848  
FILED MAY 23, 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 March 17, 2003. The hearing officer decided that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter, September 21 through December 21, 2002. The carrier has appealed and urges reversal, arguing that the hearing officer erred in determining that the claimant's underemployment was a direct result of the compensable injury and that he satisfied the good faith effort to obtain employment requirement for SIBs. The claimant has responded and urges affirmance.

DECISION

Affirmed.

The carrier challenged the hearing officer's finding that the claimant's underemployment during the qualifying period was a direct result of the impairment from the compensable injury. 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 an 800 Room Manager. Texas Workers' Compensation Commission Appeal No. 030478, decided April 7, 2003.

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 or her ability to work to satisfy the good faith effort requirement for SIBs. Texas Workers' Compensation Commission Appeal No. 020103, decided February 27, 2002. The carrier argued that the claimant had a burden to show he had no ability to work after he stopped working during the qualifying period. We decline to address this argument, as the hearing officer found good faith effort existed.

The carrier asserts that the claimant was still required to look for work every week of the qualifying period. The carrier argues that the Appeals Panel's decisions interpreting Rule 130.102(d)(1) to mean that a claimant need not look for work if he has worked only a portion of a qualifying period are erroneous and that the Rule does not apply in this case, as the claimant only worked for 4 weeks in the qualifying period. The carrier relies on the Texas Workers' Compensation Commission's (Commission) Preamble in the Texas Register, regarding proposed changes to the aforementioned Rule, to support its argument. The Preamble, in pertinent part reads:

A person who has actually been successful in returning to work within his or her ability would not be required to continue additional job search efforts. This standard would not apply to situations where the position was clearly limited to a very short period of time. It is intended to apply to more regular employment that represents a true return to the workforce. (TEX. REG, January 22, 1999)

In Texas Workers' Compensation Commission Appeal No. 020370, decided April 4, 2002, we found the claimant's termination after the 10th week of the qualifying period to be of no consequence under Rule 130.102(d)(1) because we specifically rejected the argument that a claimant must work in a relatively equal position during each week of the qualifying period in order to satisfy the good faith requirement. See also Texas Workers' Compensation Commission Appeal No. 011959, decided September 19, 2001. In the instant case, the claimant had returned to work for the employer in the fall of 2001. He worked for nearly a year before the doctor took him off work for his injuries, effective July 10, 2002, one month into the qualifying period at issue. This is not a case of a short-term return to work within the meaning of Rule 130.102(d)(1).

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).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge