

APPEAL NO. 031146
FILED JUNE 26, 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 31, 2003. The hearing officer decided that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 17th quarter. The appellant (carrier) appeals that determination. There is no response from the claimant contained in our file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

It is undisputed that the claimant was working during the qualifying period for the 17th quarter of SIBs. It is the carrier's assertion that the claimant should have been working full-time in a job that paid more, and that he self-limited the amount of time he worked. Among other requirements, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) 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 returned to work in a position which is relatively equal to the injured employee's ability to work. The preamble to Rule 130.102(d)(1) states, "This standard eliminates arguments regarding the rate of pay for the job because it ties the finding to whether or not the employment is appropriate considering the injured employee's ability to work. A person who has actually been successful in returning to work within his or her ability will not be required to continue additional job search efforts." In Texas Workers' Compensation Commission Appeal No. 020370, decided April 4, 2002, we reversed a hearing officer's determination that the claimant was not entitled to SIBs based upon the determination that the claimant failed to satisfy the good faith requirement by returning to a job relatively equal to his ability to work. In that case we stated,

The preamble to Rule 130.102(d)(1) eliminates arguments as to the rate of pay of the injured employee's job. Thus, to the extent that the hearing officer's determination that the claimant's job during the qualifying periods...was not a job that was relatively equal to his ability to work based upon some belief that the claimant could have been paid a higher wage, he erred in so finding.

Indeed, as we have previously noted, the focus of the "relatively equal" inquiry in Rule 130.102(d)(1) is not on whether the wages are the same, but rather on whether the employment was relatively equal in terms of hours worked and whether the job is within the claimant's restrictions. Texas Workers' Compensation Commission Appeal No.

000702, decided May 22, 2000; Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000.

Conflicting evidence was presented on the disputed issue. Whether or not the claimant's employment was relatively equal to his ability to work presented a question of fact for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's determination on this issue is so against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The present case is distinguishable from our determination in Texas Workers' Compensation Commission Appeal No. 022805, decided December 17, 2002, in which we reversed the decision of the hearing officer that the claimant in the present case was entitled to SIBs for the 15th quarter. In Appeal No. 022805 we reversed because the evidence was that the claimant was working part time when he had been released to full-time work. In the present case, the claimant testified that he was working full time and the hearing officer believed that testimony. While the carrier argues on appeal that the claimant's testimony in this regard was not credible, determining the credibility of the claimant's testimony was a matter for the hearing officer as the finder of fact.

The carrier also argues on appeal that the claimant failed to prove that his underemployment during the qualifying period for the 17th quarter was a direct result of his impairment from the compensable injury. We have stated that a finding of "direct result" can be sufficiently supported by evidence that an injured employee sustained an 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. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. The hearing officer's finding of direct result is supported by the claimant's testimony that he could not perform the type of work he was doing at the time of the injury. Consequently, we affirm the hearing officer's direct result determinations.

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge