

APPEAL NO. 031159
FILED JUNE 18, 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 April 16, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 12th and 13th quarters. The appellant (carrier) appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule criteria for SIBs. At issue in this case is whether the claimant had returned to work earning less than 80% of his average weekly wage (AWW) as a direct result of his impairment, as required by Section 408.142(a)(2) and Rule 130.102(b)(1), and whether he had attempted in good faith to obtain employment commensurate with his ability to work, as required by Section 408.142(a)(4) and Rule 130.102(b)(2).

The carrier argues that the claimant's Work Status Report(s) (TWCC-73) do not support the hearing officer's determination that the "impairment from the injury and its resulting surgery limited Claimant from heavy lifting, from standing for periods over 15 to 20 minutes, and from bending." A medical report dated April 22, 2002, reflects that Dr. W stated that the claimant "returned to work in a supervisory capacity with the restrictions of not lifting more than 15 to 25 pounds, no standing more than 15 to 20 minutes, an no bending." The hearing officer could consider the medical report and TWCC-73(s) in evidence to determine that the claimant's compensable injury restricted his ability to work. There is sufficient evidence to support the hearing officer's determination on this point.

The carrier argues that the medical evidence is insufficient to support the hearing officer's SIBs determination for the 12th quarter because the claimant was examined outside of the qualifying period. In Texas Workers' Compensation Commission Appeal No. 960880, decided June 18, 1996, the Appeals Panel stated that "[m]edical evidence from the filing periods is clearly relevant but other medical evidence from outside the periods, especially that which is relatively close to the filing periods, may be relevant to the condition of the claimant during those periods." In Texas Workers' Compensation Commission Appeal No. 001055, decided June 28, 2000, the Appeals Panel noted that medical evidence from outside the qualifying period may be considered insofar as the hearing officer finds it probative of conditions in the qualifying period. The hearing

officer could consider the medical report of Dr. W and the TWCC-73(s) in determining SIBs eligibility.

The carrier argues that the hearing officer erred in determining direct result and good faith as required by Rule 130.102(b). Rule 130.102(b) provides that an injured employee who has an impairment rating of 15% or greater and who has not commuted any impairment income benefits, is eligible to receive SIBS if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. The hearing officer was persuaded by the claimant's testimony and the wage statements in evidence that the claimant's earnings during the qualifying periods in dispute were less than 80% of the claimant's AWW as a direct result of his impairment from the _____, injury. The Appeals Panel has consistently stated that an injured employee need not establish that the impairment is the only cause of the unemployment or underemployment but only that it is a cause, and that the direct result requirement is "sufficiently supported by evidence that an 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. The evidence sufficiently supports the hearing officer's determination that the claimant's impairment from the _____, injury was a cause of the claimant's reduced earnings during the qualifying periods in dispute. We accept those determinations as meaning that the claimant met the direct result and the good faith criteria of Rule 130.102(b).

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATE SERVICES COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge