

APPEAL NO. 031827  
FILED AUGUST 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 June 2, 2003. The hearing officer determined that the claimant (respondent) is entitled to supplemental income benefits for the fifth and sixth quarters. The appellant (carrier) appeals, asserting that the claimant is not employed in a position relatively equal to his ability to work, and that his underemployment is not a direct result of his compensable injury. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

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 carrier contends that the hearing officer erred in determining that the "claimant was not required to seek employment in that he was employed in a position or positions commensurate with his ability to work." The question of whether the job a claimant works during the qualifying period is a job that is relatively equal to the injured employee's ability to work is a question of fact for the hearing officer. Although the claimant's hours were reduced during the qualifying periods, the hearing officer determined that the claimant had returned to work in a position that was relatively equal to his ability to work. That determination is supported by sufficient evidence and is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, it will not be disturbed on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer determined that the claimant's underemployment was a direct result of the impairment from the compensable injury. The carrier challenges the hearing officer's direct result determination. Rule 130.102(c) provides that "[a]n injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings." A direct result determination is sufficiently supported if the record establishes that the claimant sustained a serious injury with lasting effects such that he cannot reasonably perform the job he was doing at the time of his compensable injury. Texas Workers' Compensation Commission Appeal No. 001847, decided September 15, 2000; Texas Workers' Compensation Commission Appeal No. 001310, decided July 21, 2000. The claimant testified that he was unable to return to his previous employment as a waiter because of the need to carry heavy trays and bend and stoop. The evidence provides sufficient support for the

determination that the claimant had reduced earnings during the fifth and sixth quarter qualifying periods as a direct result of his impairment from the compensable injury.

We affirm the decision and order of the hearing officer.

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

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

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Edward Vilano  
Appeals Judge