

APPEAL NO. 032390  
FILED OCTOBER 24, 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 August 14, 2003. With respect to the issues before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (carrier) appeals that determination and challenges Finding of Fact No. 3. There is no response on file from the claimant.

DECISION

Affirmed.

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). At issue in this case are whether the claimant attempted in good faith to obtain employment commensurate with her ability to work, whether the claimant's underemployment was a direct result of her impairment, and whether the hearing officer erred in finding that the claimant earned \$1837.50 during the qualifying period. The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, with an impairment rating of 15% or greater. They further stipulated that the qualifying period for the fourth quarter was from December 5, 2002, to March 5, 2003; that the quarter ran from March 19 to June 17, 2003; and that the claimant's preinjury average weekly wage is \$785.00. It is apparent that the claimant was seeking to show that she was entitled to SIBs based on returning to work in a position relatively equal with her ability to work in accordance with Rule 130.102(d)(1).

The hearing officer found that the claimant attempted, in good faith, to obtain employment commensurate with her ability to work because she was employed during the qualifying period selling residential real estate. Rule 130.102(d)(1) provides that a good faith effort has been made if the employee "has returned to work in a position which is relatively equal to the injured employee's ability to work." Whether a good faith effort is shown is basically a question of fact for the hearing officer, and cases tend to become very fact specific in self-employment situations. Texas Workers' Compensation Commission Appeal No. 982820, decided January 11, 1999.

The carrier asserts that the claimant did not prove her self-employment status, arguing that Rule 130.101(D) requires copies of all supporting documents. However, we have held that Rule 130.101(D) does not require creation of documents where none may exist and that the hearing officer can accept testimony that assists in resolving the issue. Texas Workers' Compensation Commission Appeal No. 030186, decided March 7, 2003. The hearing officer found the claimant's testimony credible regarding her endeavors to establish a successful business; that her efforts were commensurate with her ability to work; and that she met the good faith requirement for SIBs with her efforts.

Nothing in our review of the record reveals that the hearing officer's determinations in that regard are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; thus, no sound basis exists for us to disturb the good faith determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier further contends that the claimant's underemployment was not a direct result of her impairment, as she had been released to full time, unrestricted duty as demonstrated by a Work Status Report (TWCC-73) admitted into evidence. The carrier contends that the claimant's underemployment was a result of economic factors unrelated to her impairment, to which the claimant testified at the hearing. The Appeals Panel has consistently held 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. Texas Workers' Compensation Commission Appeal No. 011443, decided August 1, 2001; Texas Workers' Compensation Commission Appeal No. 032019, decided September 10, 2003. In his discussion of the evidence, the hearing officer noted that the claimant's move to residential real estate sales allows her to work from home, permits a mixture of standing, sitting, and walking, and provides the flexibility of hours that the claimant's preinjury commercial real estate job did not provide. He concluded that the "impairment from Claimant's compensable injury is a significant factor in her current employment situation." Our review of the record does not reveal that the hearing officer's direct result determination is so against the great weight of the evidence as to compel its reversal on appeal.

The hearing officer's decision and order are affirmed.

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

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

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge