

APPEAL NO. 032440
FILED OCTOBER 29, 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 25, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth quarter (March 3 through June 3, 2003) or for the sixth quarter (June 4 through September 2, 2003). The claimant appealed, essentially on sufficiency of the evidence grounds. The respondent (carrier) 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 requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(5). The claimant also appeals the hearing officer's findings on the direct result criteria. The parties stipulated that the claimant sustained a compensable neck, low back, and right hip injury on _____, with an impairment rating of 21%; that he has not commuted any portion of his impairment income benefits; that the qualifying period for the fifth quarter of SIBs was from November 21, 2002, through February 19, 2003; and that the qualifying period for the sixth quarter of SIBs was from February 20 through May 21, 2003.

The claimant contends that the hearing officer erred in determining that he failed to meet his burden regarding direct result. The claimant was required to establish that he earned less than 80% of his average weekly wage (AWW) as a direct result of the impairment from the compensable injury. Section 408.142(a)(2) and Rule 130.102(b)(1). An injured employee has earned less than 80% of the employee's AWW 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. The Appeals Panel has held that the focus is not solely on whether the claimant has been released to the former job without restrictions. The hearing officer may also consider: (1) why the claimant was unemployed during the filing period; and (2) whether the impairment affected or impacted the claimant's unemployment or underemployment situation. Texas Workers' Compensation Commission Appeal No. 030096, decided March 6, 2003. In the instant case, the claimant testified that he could have returned to his preinjury job during the qualifying periods of the quarters in issue had it been available. The claimant testified that he was capable of performing his preinjury job and that if the employer had not closed, he would still be working there. The hearing officer's direct result finding is supported by sufficient evidence.

With regard to the good faith criterion, Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3) and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. Good faith effort is a factual determination for the hearing officer to resolve. There is sufficient evidence to support the finding that the claimant failed to provide sufficient documentation to show that he made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods at issue.

We have reviewed the complained-of determinations regarding direct result and SIBs entitlement 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).

We affirm the decision and order of the hearing officer.

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

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge