APPEAL NO. 032494
FILED NOVEMBER 12, 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 September 2, 2003. The hearing officer determined that the respondent (claimant) had a reasonable expectation of working as a schoolteacher during the summer of 2002, and that the claimant's average weekly wage (AWW) for computing temporary income benefits (TIBs) between June 1 and August 6, 2002, is $942.97.

The appellant (self-insured) appealed, basically on sufficiency of the evidence grounds, contending that the claimant had not worked in the summer of 2001 and had not been offered a summer teaching job for 2002. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant, an elementary school teacher, worked during the summer 2000, applied for, and was offered, a summer teaching job in 2001, but declined the offered job when it conflicted with his honeymoon. In dispute is whether the claimant was verbally offered a summer teaching job by Dr. B, an assistant principal in the self-insured's system, in 2001 or 2002. Dr. B adamantly testified (although not listed as a witness in the hearing officer's decision) that she offered the claimant a teaching job in March 2001 although there is some evidence it was in spring 2002. There is conflicting evidence regarding who said what to whom and when. The claimant sustained a compensable injury on _____, and was unable to work the summer of 2002.

The crux of this case is in Section 408.0446(b) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.7(d) (Rule 128.7(d)) which allow the carrier (in this case the self-insured) to adjust a school district employee's AWW to reflect what the employee could reasonably expect to earn during the period for which TIBs are paid (or in this case the summer session 2002).

The claimant had clearly worked a summer session in the past, had applied and been offered a job in 2001 (which he turned down) and again applied for summer work in March 2002. The hearing officer found that the claimant was injured before he was offered or rejected for the job. Although there was "obvious confusion" regarding the job offers, the hearing officer determined, based on the evidence, that the claimant had a reasonable expectation of working as a schoolteacher during the summer of 2002 and that no adjustment of the AWW was appropriate. Whether the claimant had a reasonable expectation of employment was a factual determination for the hearing officer to resolve and is fact-specific for each case. Therefore, we hold Texas Workers' Compensation Commission Appeal No. 030584, decided April 24, 2003, to be

distinguishable from the facts in this case. As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and 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, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

JG
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Chris Cowan
Appeals Judge