

APPEAL NO. 032575  
FILED NOVEMBER 13, 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 3, 2003. The hearing officer determined that: (1) the average weekly wage (AWW) is \$1,104.47; (2) the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter; and (3) the claimant is entitled to fourth quarter SIBs. The appellant (carrier) appeals the AWW and fourth quarter SIBs determinations, essentially on sufficiency of the evidence grounds. The claimant urges affirmance. The hearing officer's third quarter SIBs determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

**AWW**

The hearing officer did not err in determining that the claimant's AWW is \$1,104.47. The carrier contends that there is no probative evidence to establish that the claimant was paid more than \$961.31 per week, as provided in the Employer's Wage Statement (TWCC-3), during the 13 weeks immediately preceding the date of injury. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the claimant's testimony, the hearing officer found that the claimant's AWW is \$1,104.47, using a fair, just and reasonable method as provided under Section 408.041(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.3(g) (Rule 128.3(g)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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). Nor can we conclude that the hearing officer abused his discretion in reaching this determination. Morrow v. H.E.B., 714 S.W.2d 297 (Tex. 1986).

**FOURTH QUARTER SIBs**

The hearing officer did not err in determining that the claimant is entitled to fourth quarter SIBs. Section 408.142 and Rule 130.102 establish the requirements for entitlement to SIBs. The carrier contends that the claimant failed to establish that she earned less than 80% of her AWW during the fourth quarter qualifying period. This was a question of fact for the hearing officer to resolve. In view of the hearing officer's AWW determination and the claimant's testimony that she earned \$826.93 per week during

the qualifying period, the hearing officer could find that the claimant earned less than 80% of her AWW.

The carrier also argues that, because the claimant returned to her previous line of work, she does not satisfy the test for "direct result," citing language contained in Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996 (stating that "a finding of 'direct result' is sufficiently supported by evidence that a claimant sustained a serious injury with lasting effects and that he could not reasonably perform the type of work that he was doing at the time of the injury."). However, we have said that it is not necessarily true that if a claimant is physically able to do her former work, then, as a matter of law, she cannot establish that her unemployment is a direct result of her impairment. See Texas Workers' Compensation Commission Appeal No. 982993, decided February 5, 1999. The hearing officer may also consider: (1) why the claimant was underemployed during the filing period; and (2) whether the impairment affected or impacted the claimant's unemployment or underemployment situation. *Id.* In view of the continuing effects of the claimant's compensable injury, the hearing officer could find that the claimant's underemployment is a direct result of the impairment from the compensable injury. Accordingly, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain, supra.*

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** 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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Edward Vilano  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge