

APPEAL NO. 032638
FILED NOVEMBER 20, 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 4, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier) appealed, disputing the determination of SIBs entitlement. The claimant responded, urging affirmance.

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 his ability to work, and whether the claimant's underemployment was a direct result of his impairment. 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 first quarter was from February 19 through May 20, 2003; and that the first quarter ran from June 3 through September 1, 2003. The claimant was seeking to show that he was entitled to SIBs based on returning to work in a position relatively equal with his ability to work in accordance with Rule 130.102(d)(1).

It was undisputed that the claimant was working full time during the qualifying period at a job in which he was paid less than 80% of the average weekly wage of his preinjury job. The hearing officer found that the claimant's underemployment during the qualifying period was a direct result of the impairment from the compensable injury. It is the carrier's assertion that "the direct producing cause of the claimant's lower earnings was his decision to quit his [preinjury] job." 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 believable testimony and the medical records are convincing that claimant is not able to return to the work environment where he was injured." 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.

Whether or not the claimant's underemployment was relatively equal to his ability to work presented a question of fact for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's determination on this issue is so

against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**ROBIN MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75603.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge