APPEAL NO. 032711
FILED DECEMBER 4, 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 5, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter, which ran from April 4 to July 3, 2003. The appellant (carrier) appealed, arguing that this determination is not supported by sufficient evidence. There is no response from the claimant in the appeal file.

DECISION

Affirmed.

The requirements for entitlement to SIBs are set out in Section 408.142 and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). 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)(1) and (5). The carrier also appeals the hearing officer's findings on the direct result criteria. The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant has a 21% impairment rating; that the qualifying period for the first quarter is December 21, 2002, to March 21, 2003; and that during the qualifying period for the first quarter the claimant worked and earned less than 80% of his average weekly wage.

With regard to the required "good faith effort," the hearing officer was satisfied that the claimant proved that he looked for work commensurate with his ability to work during every week of the relevant qualifying period when he was not actively employed and that he documented those job search efforts. The carrier argues that the claimant failed to look for work every week while he was unemployed, contending that the claimant failed to look for work during the week of January 18 to January 14, 2003. In evidence was a letter from an employer verifying that the claimant began work for it on January 20, 2003, and continued working through March 21, 2003. We have previously held that the question of whether a claimant made a good faith job search is a question of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, `994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the determinations that the claimant returned to work in positions which were relatively equal to the claimant's

ability to work and that the claimant made a good faith effort to obtain employment commensurate with his ability to work.

The carrier argues that the claimant's underemployment and unemployment were not the direct result of his impairment from the compensable injury sustained on _____. A finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. In order to satisfy the direct result requirement, one only need prove that the unemployment or underemployment was a direct result of the compensable injury. *See* Texas Workers' Compensation Commission Appeal No. 001786, decided September 13, 2000. The record reflects that the claimant had back surgery May 5, 2000, and right and left shoulder surgeries in April of 2001 and August of 2001 respectively. In the instant case, the claimant testified that he could not have returned to his preinjury job during the qualifying period of the quarter in issue had it been available, since he could no longer lift more than 32 pounds as ordered by his treating doctor. There was evidence that as of July 30, 2003, the lifting restriction was still in effect. Nothing in our review of the record indicates that these findings are 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 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Robert W. Potts
Appeals Judge