

APPEAL NO. 032814
FILED DECEMBER 2, 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 24, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters (June 13 through December 11, 2002), and that the claimant is entitled to SIBs for the third, fourth, and fifth quarters (December 12, 2002, through September 10, 2003). The appellant (carrier) appealed the hearing officer's determinations that the claimant was entitled to SIBs for the third, fourth, and fifth quarters. The claimant responded, urging affirmance. The hearing officer's determinations that the claimant is not entitled to SIBs for the first and second quarters were not appealed and have become final. Section 410.169.

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). The SIBs criteria in issue are whether, during the qualifying periods for the third, fourth, and fifth quarters, the claimant earned less than 80% of his average weekly wage (AWW) as a direct result of the impairment from the compensable injury, and whether he made a good faith effort to obtain employment commensurate with his ability to work. Rule 130.102(c) provides that 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. Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. The hearing officer found that during the relevant qualifying periods: (1) the claimant's underemployment was a direct result of the impairment from the compensable injury; (2) the claimant had some ability to work; (3) the claimant's requirement to attempt in good faith to obtain employment commensurate with his ability to work was satisfied because he returned to work in a position which was relatively equal to his ability to work.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The disputed matters regarding the good faith and direct result criteria for SIBs entitlement presented questions of fact for the hearing officer to resolve from the evidence presented. We conclude that the hearing officer's decision that the claimant is entitled to SIBs for the third, fourth, and fifth quarters is supported by sufficient evidence and that it 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 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**STEPHEN C. CARLIN
13155 NOEL ROAD, 900 THREE GALLERIA TOWER
DALLAS, TEXAS 75240.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge