APPEAL NO. 033031
FILED JANUARY 8, 2004

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 August 8, 2003. The hearing was continued and the record closed on September 19, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the sixth quarter (October 23, 2002, through January 21, 2003); the seventh quarter (January 22 through April 22, 2003); or the eighth quarter (April 23 through July 22, 2003). The claimant appeals the determinations of nonentitlement, arguing that the decision was against the great weight and preponderance of the evidence. The respondent (carrier) 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). Rule 130.102(b) provides that an injured employee who has an impairment rating of 15% or greater, and who has not commuted any impairment income benefits, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage (AWW) as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. At issue in this case are the good faith and direct result criteria for SIBs.

Although the hearing officer found that the claimant's unemployment during the qualifying period for the sixth quarter was a direct result of the impairment from his compensable injury, she found that the claimant did not make a good faith effort to seek employment within his restrictions. The hearing officer found that during the qualifying period for the seventh quarter, the claimant did not make a good faith effort to seek employment and, further, that his unemployment was not a direct result of the impairment from his compensable injury. Additionally, the hearing officer found that although the claimant was self-employed during the qualifying period for the eighth quarter, earning less than his AWW, the claimant's underemployment was not a direct result of the impairment from his compensable injury. The hearing officer noted that she did not find the claimant to be at all credible and that the videotape in evidence showed the claimant could bend, stoop, lift, as well as squat and rise to his feet without support. As well as various other activities, the videotape showed the claimant assisting another individual pushing a car.

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 Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and 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 (Tex. 1986).

We affirm the decision and order of the hearing officer.

According to information provided by carrier, the true corporate name of the insurance carrier is **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.

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Margaret L. Turner
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Gary L. Kilgore
Appeals Judge