

APPEAL NO. 033050
FILED JANUARY 13, 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 (CCH) was held on October 29, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the second quarter, beginning on October 9, 2002, and continuing through to January 7, 2003. The appellant (carrier) appealed, disputing the determination of entitlement. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on June 5, 2001, with a 19% impairment rating for his compensable injury; that he did not elect to commute his impairment income benefits; and that the second quarter qualifying period ran from June 27 through September 25, 2002. The hearing officer determined that the claimant is entitled to SIBs for the second quarter because he made a good faith effort to obtain employment commensurate with his ability to work.

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 carrier appeals the hearing officer's determination of entitlement to SIBs on both the good faith and direct result requirements (see Section 408.142(a)(2) and (4) and Rule 130.102(b)). The claimant testified and the medical records reflect that the claimant underwent a lumbar fusion. The claimant further testified that he has permanent lifting restrictions.

We have stated that 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. Whether the claimant satisfied the direct result requirement for SIBs entitlement was a factual question for the hearing officer to resolve. As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's direct result findings are 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).

The hearing officer was satisfied that the claimant provided sufficient documentation to show he made a good faith effort to obtain employment

commensurate with his ability to work during the qualifying period for the second quarter. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established (Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). In contending that the claimant's job search efforts do not rise to the level of a good faith search, the carrier emphasizes the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer to resolve. Nothing in our review of the record reveals that the hearing officer's good faith determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse that determination on appeal. Cain, supra.

We affirm the decision and order of the hearing officer.

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:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge