

APPEAL NO. 033080
FILED JANUARY 14, 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 October 21, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fourth quarter.

The claimant appealed, contending that the hearing officer applied the wrong standard in determining that the claimant's unemployment was not a direct result of her impairment. 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). The hearing officer's determination that the claimant had made a good faith effort to obtain employment commensurate ("work in line") with her ability to work by satisfactorily participating in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission has not been appealed. (See Rule 130.102(d)(2)). At issue in this case is the criteria of Section 408.142(a)(2) and Rule 130.102(b)(1) that the claimant's unemployment (failure to earn 80% of her average weekly wage) was "a direct result of the impairment from the compensable injury." The parties stipulated that the qualifying period was from December 2, 2002, through March 2, 2003.

The Appeals Panel has frequently noted that the direct result criterion is sufficiently supported by evidence that the injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960165, decided March 7, 1996; Texas Workers' Compensation Commission Appeal No. 980301, decided March 25, 1998. In this case it is undisputed that the claimant sustained a low-back injury on _____, which resulted in spinal surgery in August 2001, and that the claimant has a 15% impairment rating. The treating doctor, in a report dated October 14, 2003, recites that based on the claimant's description of her previous job, "which required lifting in excess of fifty (50) pounds routinely, [a statement which is disputed] repetitive bending and continuous reaching, [also disputed] it is my medical opinion that the patient cannot reasonably perform the type of work she was doing at the time of her injury." The hearing officer apparently did not give much weight to the treating doctor's report, something which was within her prerogative, as the sole judge of the weight and credibility to be given to the evidence to do.

At issue then is whether there was evidence to support the hearing officer's determination that the claimant could perform her preinjury job. The Appeals Panel has

also previously stated that the good faith job search and direct result requirements are different SIBs eligibility criteria and that the direct result criteria was not intended as another method to evaluate the job search requirement. Appeal No. 960165, *supra*; (citing Texas Workers' Compensation Commission Appeal No. 950849, decided July 7, 1995). In addition, we have consistently stated that a claimant need not establish that his or her impairment is the only cause of his or her unemployment or underemployment in order to satisfy the direct result criteria; rather, a claimant need only establish that his or her impairment is a cause of the unemployment or underemployment. Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996; Texas Workers' Compensation Commission Appeal No. 960895, decided June 27, 1996; Texas Workers' Compensation Commission Appeal No. 960092, decided February 26, 1996; Texas Workers' Compensation Commission Appeal No. 941649, decided January 26, 1995. In this case the hearing officer relies on the reports of Dr. P, the carrier's required medical examination doctor, as well as a surveillance video to reach her conclusion. Dr. P in a report dated January 6, 2003, only states that the claimant could return "to a light-duty protected work setting" or "could work in a light-duty environment in an office setting." (Claimant's preinjury employment was an "assembler" refurbishing keyboards.) However, in a report dated August 21, 2003, Dr. P comments that he had reviewed the claimant's job description, and the surveillance video and reached the conclusion that there was no "physical change that would preclude this patient from returning to the same work that she was doing at the time of the occasion of her original injury." The hearing officer determined that Dr. P's "reports are credible" and based her determination that the claimant was able to return to her preinjury job on those reports. In view of the disputed nature of the claimant's preinjury job duties and the hearing officer's prerogative of what evidence to believe, or not to believe, the hearing officer's determinations are marginally supported by the evidence.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not 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).

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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge