

APPEAL NO. 040056
FILED MARCH 3, 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 December 15, 2003. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the claimant satisfied the good faith and direct result criteria and in determining that the claimant is entitled to SIBs for the first quarter. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, that she was assigned an impairment rating of 15% or more, and that she did not commute her impairment income benefits. The qualifying period for the first quarter of SIBs ran from May 16 to August 14, 2003. At issue in this case is whether the claimant met the good faith requirement pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) by demonstrating that she returned to work in a position that was "relatively equal" to her ability to work during the qualifying period and whether the claimant's underemployment in the qualifying period was a direct result of her impairment from the compensable injury.

The hearing officer did not err in determining that the claimant satisfied the good faith requirement pursuant to Rule 130.102(d)(1). The carrier contends that the hearing officer erred in determining that the job the claimant worked during the qualifying period was "relatively equal" because she did not work full time, she did not work each week of the qualifying period, and she did not search for work each week during the qualifying period. We find no merit in that assertion. The question of whether a job is relatively equal is a question of fact for the hearing officer and the focus of the inquiry is on the hours worked and the ability to work, not on the wages paid. Texas Workers' Compensation Commission Appeal No. 010605, decided May 1, 2001; Texas Workers' Compensation Commission Appeal No. 000616, decided April 26, 2000. In the instant case, the hearing officer determined that the claimant returned to work within her restrictions and that determination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In Texas Workers' Compensation Commission Appeal No. 001579, decided August 17, 2000, we specifically rejected the argument that a claimant must work in a relatively equal position during each week of the qualifying period in order to satisfy the good faith requirement of Rule 130.102(d)(1). Where, as here, the claimant had returned to work in a job relatively equal to her ability to work within the qualifying

period, she was not also required to conduct a job search in accordance with Rule 130.102(e) in order to satisfy the good faith requirement.

The hearing officer likewise did not err in determining that the claimant's underemployment was a direct result of the impairment caused by the compensable injury. Rule 130.102(c) provides that "[a]n injured employee has earned less than 80% of the employee's average weekly wage 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." A direct result determination is sufficiently supported if the record establishes that the claimant sustained a serious injury with lasting effects such that she cannot reasonably perform the job she was doing at the time of her compensable injury. The record establishes that the claimant has restrictions, and that she cannot perform the job she held at the time of her compensable injury. That evidence provides sufficient support for the determination that the claimant has reduced earnings for the first quarter qualifying period as a direct result of her impairment from the compensable injury.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge