APPEAL NO. 040495
FILED APRIL 26, 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 February 3, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter. The claimant appeals, asserting that the hearing officer did not base her determination solely on the evidence presented at the hearing, and that the hearing officer applied the wrong legal standard in determining that the claimant's unemployment was not the direct result of her impairment from the compensable injury. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

To the extent that the claimant is asserting that the hearing officer did not base her determination solely on the evidence presented at the hearing, we do not find that to be the case. The information about the fourth SIBs quarter that is found in the decision and order was presented to the hearing officer during the hearing on the fifth SIBs quarter, and, in any event, the hearing officer stated on the record that each quarter stands on its own, reflecting that she correctly understands the law. We perceive no error.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule criteria for SIBs. At issue in this case is whether the claimant met the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1). The good faith job search requirements of Section 408.142(a)(4), established by the claimant's evidence of satisfactory participation in a Texas Rehabilitation Commission vocational rehabilitation program, as specified in Rule 130.102(d)(2), have not been challenged by the carrier.

Conflicting evidence was presented at the hearing regarding "direct result." Determination of "direct result" is normally a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620

(Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We do not find that to be the case, and, accordingly, affirm the hearing officer's direct result determination.

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.

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Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Edward Vilano
Appeals Judge