

APPEAL NO. 041070
FILED JUNE 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 March 30, 2004. The hearing officer resolved the disputed issue by determining that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (carrier) appeals this determination. The appeal file contains no response from the claimant.

DECISION

Affirmed.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with her ability to work. The carrier asserts that the hearing officer erred in determining that the claimant satisfied both of the aforementioned requirements for SIBs entitlement. 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. To meet the direct result requirement, one only need prove that the unemployment or underemployment was a direct result of the compensable injury. See Texas Workers' Compensation Commission Appeal No. 001786, decided September 13, 2000. The carrier asserts that the claimant did not meet the direct result criterion because she had been given a full duty release. However, the fact that the claimant was released to do her former work is not determinative of the direct result issue. Texas Workers' Compensation Commission Appeal No. 982993, decided February 5, 1999. The hearing officer could also consider: (1) why the claimant was underemployed during the qualifying period; and (2) whether the impairment affected or impacted the claimant's unemployment or underemployment situation. *Id.* In view of the continuing effects of the claimant's compensable injury, the hearing officer could make a direct result finding in the claimant's favor. Upon review of the record, we cannot agree that the hearing officer's direct result 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).

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) provides the methods by which a claimant can satisfy the good faith requirement of Section 408.142. Whether the claimant satisfied the good faith requirement was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance

Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer was persuaded by the evidence that the claimant satisfied the good faith requirement and concluded that she is entitled to fourth quarter SIBs. We perceive no reversible error in the hearing officer decision. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge