

APPEAL NO. 041207
FILED JULY 12, 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 April 26, 2004. With respect to the issues before her, the hearing officer determined that the respondent's (claimant) compensable injury of _____, includes aggravation of cervical and lumbar degenerative disc disease and a herniated disc at L2-3, and that she is entitled to supplemental income benefits (SIBs) for the sixth quarter. In its appeal, the appellant (carrier) argues that those determinations are against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The requirements for entitlement to SIBs are set out in Section 408.142 and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the claimant sustained a compensable injury on _____; that she received an impairment rating of 24%; that she did not commute her impairment income benefits; that the sixth quarter of SIBs ran from January 7 through April 6, 2004; and that the qualifying period for the sixth quarter ran from September 25 through December 24, 2003. With regard to the "good faith" requirement, the hearing officer was satisfied that the claimant proved that she looked for work commensurate with her ability to work during each week of the relevant qualifying period and that she documented those job search efforts. 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, or the determination that the claimant is entitled to SIBs for the sixth quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer did not err in determining that the claimant's compensable injury of _____, includes aggravation of cervical and lumbar degenerative disc disease and a herniated disc at L2-3. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the

evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the disputed issue and the hearing officer was acting within her province as the fact finder in giving more weight to the evidence tending to demonstrate the causal connection between the claimant's compensable injury and the aggravation of the cervical and lumbar degenerative disc disease and the L2-3 disc herniation. Our review of the record does not reveal that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the extent-of-injury determination on appeal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Margaret L. Turner
Appeals Judge