

APPEAL NO. 041457  
FILED AUGUST 11, 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 (CCH) was held on May 21, 2004. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 10th quarter, February 24 to May 24, 2004. The appellant (carrier) appealed, disputing the findings of direct result and good faith and the conclusion that the claimant is entitled to SIBs for the 10th quarter. The claimant 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 parties stipulated that the qualifying period for the 10th quarter was from November 12, 2003, to February 10, 2004; that the claimant had an impairment rating of 15% or more from the relevant compensable injury; and that impairment income benefits were not commuted.

The carrier appeals the hearing officer's determination of entitlement to SIBs on both the good faith and direct result requirements (see Section 408.142(a)(2) and (4) and Rule 130.102(b)). The record reflects that the claimant sustained a severe compensable cervical injury on \_\_\_\_\_, and has undergone two surgeries to his neck. The Appeals Panel has held that the direct result criteria may be met by a showing of a serious injury with long lasting effects which preclude a return to the preinjury employment. Texas Workers' Compensation Commission Appeal No. 002309-s, decided November 16, 2000. The preinjury employment in this case would have required lifting in excess of 80-pounds, which the claimant was unable to do. The hearing officer's determination on this point is supported by the evidence.

Although the claimant testified that he did not believe he had an ability to work, the claimant's attorney in closing argument noted that there was a report from a doctor who performed a required medical examination on the claimant who concluded he does have some ability to work. The claimant testified that he performed the job searches listed on his Application for [SIBs] (TWCC-52) by telephone because he was confined to a wheelchair and could not drive. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. 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 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 (Tex. Civ. App.-Amarillo 1974, no writ). 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 great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR  
9120 BURNET ROAD  
AUSTIN, TEXAS 78758.**

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Margaret L. Turner  
Appeals Judge

CONCURRING OPINION:

The CCH record reflects that the claimant documented several job searches in each week of the qualifying period. The hearing officer's decision is supported by the evidence.

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Robert W. Potts  
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. The eligibility requirement of Section 408.142(a) and Rule 130.102(b)(2) requires the claimant to make a good faith effort to obtain employment commensurate with his ability to work. Rule 130.102(d) and (e) set out a number of ways that the good faith requirement may be met. The hearing officer's discussion in the Background Information suggests that the claimant might have met that criteria by complying with either Rule 130.102(d)(4) or Rule 130.102(d)(5) and (e). I am unable to determine from the hearing officer's decision and the record whether the hearing officer found the good faith requirement was met by either the total inability to work in any capacity provision of Rule 130.102(d)(4) or the good faith job search efforts of Rule 130.102(d)(5) and (e). I would have remanded the case to the hearing officer to make appropriate findings of fact to support the determination that the claimant had in good faith attempted to obtain employment commensurate with his ability to work.

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Thomas A. Knapp  
Appeals Judge