

APPEAL NO. 041544
FILED AUGUST 19, 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 May 28, 2004. 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) challenges that determination as being against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

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). It is undisputed that the claimant sustained a compensable injury on _____. The parties stipulated that the claimant received an impairment rating of 15% or more; that he did not commute his impairment income benefits; that the first quarter of SIBs ran from January 28 through April 27, 2004; that the qualifying period for the first quarter ran from October 16, 2003, through January 14, 2004; and that "[d]uring the qualifying period for the first quarter, Claimant never earned wages for at least 90 days that were at least 80% of Claimant's average weekly wage [AWW]."

Although it is not entirely clear, it appears that the hearing officer determined that the claimant satisfied the good faith requirement in accordance with Rule 130.102(d)(1) by returning to work in a position which is relatively equal to his ability to work, because the evidence does not support a determination that the claimant satisfied the good faith requirement under any other subsection of Rule 130.102(d). There is evidence that the claimant returned to work on either January 5 or January 7, 2004, just before the January 14, 2004, ending date of the qualifying period. We have said that a claimant, who has returned to work in a position which is relatively equal to his ability to work, does not also have to show that he looked for work every week of the qualifying period in order to satisfy the good faith requirement. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000. More to the point, a claimant is not required to work in his position during each week of the qualifying period or otherwise document a job search in those weeks the claimant did not work, in order to satisfy the good faith requirement. Texas Workers' Compensation Commission Appeal No. 001579, decided August 17, 2000; Texas Workers' Compensation Commission Appeal No. 010472, decided April 17, 2001. The evidence of the claimant's return to work is sufficient to support a determination that the claimant satisfied the good faith requirement pursuant to Rule 130.102(d)(1) and nothing in our review of the record reveals that such a determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists

for us to disturb the hearing officer's good faith determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Lastly, we consider the carrier's challenge to the hearing officer's determination that the claimant's underemployment in the qualifying period for the first quarter is a direct result of his impairment from the compensable injury. We have long stated that a direct result determination is sufficiently supported by the evidence if the injured employee sustained a serious injury with lasting effects and can no longer reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. In this instance, there is evidence from which the hearing officer could determine that the claimant's injury resulted in permanent impairment and a permanent 25-pound lifting restriction and that, as a result thereof, the claimant can no longer reasonably work in the same position he had at the time of his injury. Consequently, there is sufficient evidence to affirm the hearing officer's determination that the claimant's underemployment in the qualifying period for the first quarter was a direct result of his impairment. In its appeal, the carrier also argues that because the claimant did not document his earnings on his Application for [SIBs] (TWCC-52), he did not sustain his burden of proving that he was underemployed, i.e. that he earned less than 80% of his AWW during the qualifying period. We find no merit in this assertion because the carrier stipulated that the claimant was underemployed in the qualifying period when it stipulated that the claimant did not earn wages that were at least 80% of the claimant's AWW during the qualifying period. Having affirmed the hearing officer's good faith and direct result determinations, we likewise affirm the determination that the claimant is entitled to SIBs for the first quarter.

The hearing officer's decision and order are affirmed.

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

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge