

APPEAL NO. 041769
FILED SEPTEMBER 7, 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 June 28, 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, January 23 through April 22, 2004. The appellant (carrier) appealed, disputing the determination of entitlement. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable right shoulder and low back injury; that the claimant did not commute any portion of his impairment income benefits; that the claimant's impairment rating is 24%; and that the qualifying period for the 10th quarter ran from October 11, 2003, through January 9, 2004. 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 claimant proceeds on the basis that he has made a good faith effort to obtain employment commensurate with his ability to work by complying with Rules 130.102(d)(5) and (e).

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 carrier argues that the claimant's unemployment is due to felony convictions rather than his injury.

The carrier argues that the hearing officer failed to make findings with respect to whether the claimant earned less than 80% of his average weekly wage. We note that the hearing officer specifically found that the claimant did not work during the qualifying period for the 10th quarter.

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. We have also held that to meet the direct result requirement, one only need prove that the unemployment was a direct result of the compensable injury. *See* Texas Workers' Compensation Commission Appeal No. 001786, decided September 13, 2000. The hearing officer's determination on this point is supported by the evidence.

Rule 130.102(d)(5) provides, in pertinent part, that an injured employee has made the required good faith effort if the employee "has provided sufficient

documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) further provides that the injured worker "who 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." The hearing officer noted that the claimant made 52 job contacts during the 10th quarter qualifying period, that the claimant's testimony was credible, and that it and other evidence established that he made a good faith effort to seek work that he could do during the qualifying period at issue.

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. 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). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Although another fact finder may have drawn different inferences from the evidence, which would have supported a different result, that fact does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge