

APPEAL NO. 042100
FILED OCTOBER 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 July 28, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, third, fourth, and fifth quarters and that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c) of the 1989 Act because she was not entitled to them for 12 consecutive months. The claimant appeals the determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to first, second, third, fourth, and fifth quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue was whether the claimant made a good faith job search commensurate with her ability to work and whether her underemployment was a direct result of the impairment from the compensable injury. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The evidence showed that the claimant sustained a compensable injury on _____, while working for a firm which sold accessories to furniture makers. She fell off a ladder and hurt her back, knee, and shoulder. She earned about \$35,000 per year at the time of her injury. In May 2000, the claimant went to work for a different firm where she earned about \$45,000 per year. She worked there until November 2001 when she decided to become self-employed. At some point, the claimant received an impairment rating of 15%. The claimant testified that she was working without restrictions by May 2000 when she changed employers. Nevertheless, the claimant testified that she continued to experience pain and at times only worked part time. She stated that she had problems standing for very long or walking for very long. She testified that she started her own business in February 2002 so she could work at her own pace. Her business has not been profitable. The hearing officer found that the claimant's underemployment during the qualifying periods was not the direct result of her impairment. He points out that she had demonstrated an ability to earn even more than she did at the time she was injured and that she had made a business decision to start her own company. In effect, she self-limited her income by her decision to pursue self-employment. For similar reasons, the hearing officer found that the claimant did not attempt in good faith to obtain employment commensurate with her ability to work. In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's 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).

The hearing officer's decision and order are affirmed.

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

**HOWARD ORLA DUGGER
1720 NORTH COLLINS BOULEVARD, SUITE 200
RICHARDSON, TEXAS 75080.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge