

APPEAL NO. 990362

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 November 9, 1998. The decision in that case was appealed and in Texas Workers' Compensation Commission Appeal No. 982844, decided January 20, 1999, the Appeals Panel reversed and remanded the case because of a statement in the decision indicating that the hearing officer appeared to have applied an incorrect standard in determining that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the first quarter. The case was returned for further consideration based on the record with guidance on the correct standard to be applied. The hearing officer gave further consideration to the case and, clarifying her statement and applying the standard correctly, nonetheless factually determined that the claimant was not entitled to SIBS for the first compensable quarter since he had some ability to work and did not seek any employment during the filing period. Regarding the first quarter, the claimant has again appealed, urging that his doctor has repeatedly stated that he suffers from severe pain and that he could not work and that he has in the past been denied recommended medical treatment by the respondent (carrier). Claimant asks that the decision be reversed and a decision rendered that he is entitled to SIBS for the first quarter. There is no response on file.

DECISION

Affirmed.

The facts of this case are set forth in the previous decision of the Appeals Panel and will not be repeated here. See Appeal No. 982844, *supra*. In our limited remand, we stated that from the statements in the hearing officer's decision that the medical evidence "essentially indicates only that Claimant is totally unable to work due to chronic severe pain, and therefore does not appear to constitute an adequate foundation for the award of [SIBS] in this case," it appeared the hearing officer may well have applied an incorrect standard. As we observed, the Appeals Panel has never held that chronic severe pain, regardless of the debilitating effects thereof on the ability to work, could not constitute an adequate foundation for the award of SIBS, and that the statements of the hearing officer suggested the application of the wrong standard. In the decision now under review, the hearing officer has clarified her understanding of the correct standard and, in applying that standard, has factually determined that the claimant did not carry his burden and did not prove an inability to work at all. Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994. Texas Workers' Compensation Commission Appeal No. 983043, decided February 16, 1999. Whether or not a claimant has some ability to work is essentially a factual matter for the resolution of the hearing officer based on all the evidence before him or her. Texas Workers' Compensation Commission Appeal No. 941154, decided October 10, 1994. On remand, it has now been clarified that the hearing officer, applying a correct understanding of the standard, factually determined that the claimant, although showing chronic and severe pain, had not proved by a preponderance of the evidence that he had no ability to work. Thus, the hearing officer determined that

entitlement to SIBS for the first quarter was not proven. While there is some medical evidence to support an inference different from that found most reasonable by the hearing officer, this is not a sufficient basis to reject her finding of fact. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). Our review of the evidence, with the correct standard being applied, does not lead us to conclude that the determination of the hearing officer was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision on remand is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge