APPEAL NO. 990703

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 12, 1999, a contested case hearing was held. The issue concerned the entitlement of the appellant, who is the claimant, to her 12th and 13th quarters of supplemental income benefits (SIBS).

The hearing officer determined that the claimant had the ability to work but had not made a good faith search for employment commensurate with this ability and, therefore, was not entitled to SIBS for these quarters. The hearing officer further held that her unemployment was not the direct result of her impairment.

Claimant appeals, arguing that she could not work and had not been released by her doctor. She asserts that the functional capacity evaluation (FCE) performed by the respondent's (carrier) doctor should have no validity. The carrier responds that the decision should be affirmed.

DECISION

Affirmed.

The claimant was injured lifting a box when employed in the warehouse for (employer). The date of her injury was _____. The claimant had completed only the 11th grade in school and had no GED. Claimant had two cervical surgeries, most recently in 1997. It was stipulated that the two filing periods ran from June 3 through December 1, 1998.

She said that her current mode of treatment consisted of pills. Claimant had been released by her doctor to sedentary work in February 1999, after the quarters in issue. This was consistent with an FCE dated January 19, 1999, which concluded that claimant could, at best, work a sedentary job but was essentially unable to work. She agreed she sought employment from only one employer during the filing period. That employer told her they would not hire her until she was released, and she concluded that this would be what other prospective employers would tell her, so she did not look.

An unsigned March 25, 1998, letter from claimant's treating doctor, Dr. V, opined that claimant would likely be unable to work for the next year and one-half. Claimant had an FCE by Dr. O, a doctor for the carrier, in July 1998. Dr. O concluded she could work in sedentary, light, and medium jobs with a two-hour limit on sitting or standing and a few other restrictions on movement.

In Texas Workers' Compensation Commission Appeal No. 931147, decided February 3, 1994, the Appeals Panel stated that if an employee established that he or she has no ability to work at all, then seeking employment in good faith commensurate with this inability to work "would be not to seek work at all." Under these circumstances, a good

faith job search is "equivalent to no job search at all." Texas Workers' Compensation Commission Appeal No. 950581, decided May 30, 1995. We have held that the burden of establishing no ability to work at all is "firmly on the claimant," Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994, and that a finding of no ability to work must be based on medical evidence. Texas Workers' Compensation Commission Appeal No. 950173, decided March 17, 1995. *See also* Texas Workers' Compensation Commission Appeal No. 941332, decided November 17, 1994. A claimed inability to work is to be "judged against employment generally, not just the previous job where injury occurred." Texas Workers' Compensation Commission Appeal No. 941334, decided November 18, 1994. Whether a claimant has no ability to work at all is essentially a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 941154, decided October 10, 1994.

In reviewing the record, we cannot agree that the hearing officer's decision was against the great weight and preponderance of the evidence, and we affirm his decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge