APPEAL NO. 991815

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 August 2, 1999. With respect to the single issue before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the first compensable quarter which ran from April 16 to July 15, 1999. In its appeal, the appellant (carrier) essentially argues that the hearing officer's determinations that the claimant made a good faith effort to look for work commensurate with her ability to work; that her underemployment is a direct result of her impairment; and that she is entitled to first quarter SIBS are against the great weight and preponderance of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she received 51 weeks of impairment income benefits from the carrier that were not commuted and commenced on April 21, 1998, the day after she reached maximum medical improvement; that the Texas Workers' Compensation Commission did not approve SIBS for the first quarter; that the filing period for the first quarter of SIBS ran from January 15 to April 15, 1999; that the claimant earned less than 80% of her average weekly wage during the filing period; and that if the claimant is entitled to SIBS for the first quarter, the carrier would owe her $851.47 per month. The claimant testified that at the time of her injury she was working as a physical therapist assistant in a rehabilitation facility. She stated that on _____, she was working with a quadriplegic patient attempting to get him to stand at the parallel bars. As he attempted to stand, he started falling backwards and the claimant had to catch him and lower him into his wheelchair. The claimant testified that she injured her cervical spine and her right shoulder in that incident and that cervical surgery was recommended but she elected to pursue conservative treatment, which has included epidural steroid injections and a botox injection.

The claimant's treating doctor is Dr. C, a pain management specialist. In a work status report of May 20, 1999, nearly a month after the end of the filing period, Dr. C stated:

> Patient may [return] to work 8 hrs a day with the only restriction of no lifting, pulling or pushing greater than 22 pounds. She does continue to be under my care.

The claimant underwent a functional capacity evaluation (FCE) which revealed that she was "able to work at the LIGHT Physical Demand Level for an 8 hour day . . . ." In a "To Whom it May Concern" letter dated March 30, 1999, Dr. C requested authorization for a second and third cervical epidural steroid injection, noting that the claimant had her first

cervical epidural steroid injection on February 18, 1999, and received significant pain relief as a result thereof.

The claimant testified that during the filing period she worked as a home care therapist. She stated that she worked as an independent contractor for two companies providing physical therapy for high level patients in their homes. She explained that high level patients are those patients that are able to perform the activities of daily living with more limited assistance than low level patients who would require physical assistance that is incompatible with her 22-pound lifting, pushing and pulling restrictions. The claimant testified that as a home care therapist she treats patients; does required paperwork per payor source (medicare, medicaid, or insurance); participates in weekly or daily case conferences; consults with family members and other health care workers regarding the patient's therapy; and makes frequent calls to doctors about patient status changes and order changes. The claimant testified that she is paid $21.90 per hour for each hour of patient care; however, she is not paid for her travel time from job to job, for the time that she completes the required paperwork, or for consultation time with family members, doctors, and other health care professionals. She stated that completion of the paperwork is required to ensure payment to the companies with whom she contracts and in turn to herself. On cross-examination, the claimant testified that there were some weeks in the filing period where she worked 40 hours or more per week, if the time she spent completing the tasks for which she was not compensated was considered, but she could not state that she worked at least 40 hours per week in each week of the filing period. She testified that she is not able to consistently work 40 hours per week because her neck injury, and the resulting limitations she has from it, limit her to providing therapy to high level patients and there are not enough patients in that category.

In challenging the hearing officer's determination that the claimant made a good faith effort to look for work commensurate with her ability to work in the filing period, the carrier cites several Appeals Panel decisions and argues that the claimant cannot satisfy the good faith requirement in this case because she was released to full-time work, but only worked part time and did not look for additional employment. We cannot agree that the cases cited by the carrier necessitate reversal in this case. To the contrary, this case is more properly evaluated under our self-employment cases. *See, e.g.,* Texas Workers' Compensation Commission Appeal No. 960188, decided March 13, 1996; Texas Workers' Compensation Commission Appeal No. 950303, decided April 12, 1995; and Texas Workers' Compensation Commission Appeal No. 94918, decided August 26, 1994. In this instance, the claimant is required to work more hours than the hours for which she is compensated in order to complete necessary paperwork to ensure that she and the company with whom she contracts are paid, to drive from job to job, and to consult with doctors and family members about the patients' therapy. The hearing officer was free to consider those efforts as an essential part of the claimant's job to provide home physical therapy services such that the company's with whom she contracts would continue to offer her physical therapy jobs within her restrictions. Our review of the hearing officer's good faith determination demonstrates that it is supported by sufficient evidence and is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound

basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier also asserts error in the hearing officer's determination that the claimant's underemployment is a direct result of her impairment. It argues that the claimant is self-limiting by not looking for work in addition to her home physical therapy work and that, as such, she cannot satisfy the direct result criterion. In this instance, it is apparent that the hearing officer believed that it was the claimant's 22-pound lifting, pushing, and pulling restrictions, which limited her to providing home therapy only to high level patients, that resulted in the claimant's underemployment. *See* Texas Workers' Compensation Commission Appeal No. 961291, decided August 15, 1996. The claimant's testimony, the FCE results, and the evidence from Dr. C support the hearing officer's determination in that regard. Our review of the record does not reveal that the hearing officer's determination that the claimant's underemployment is a direct result of her impairment is so contrary to the great weight of the evidence as to compel its reversal. Pool; Cain.

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Robert W. Potts
Appeals Judge