

APPEAL NO. 000199

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 December 14, 1999. The issue in this case was whether the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the 15th, 16th, and 17th compensable quarters. For the convenience of the parties, this hearing was held in conjunction with Docket Nos. _____ and _____ involving the claimant's entitlement to SIBS for the 13th and 14th quarters which is the subject of Texas Workers' Compensation Commission Appeal No. 000279, decided this same date. The hearing officer determined that the claimant was entitled to SIBS for the 15th quarter but was not entitled to SIBS for the 16th and 17th quarters. The appellant (carrier) appeals the hearing officer's determination that the claimant was entitled to SIBS for the 15th quarter, arguing that the evidence was insufficient to establish a complete inability to work during the filing period (December 11, 1998, through March 11, 1999) for the 15th quarter, and that since the claimant did not look for any work, she has not met the requirement that an attempt in good faith be made to seek or obtain employment commensurate with her ability to work. The claimant responds that there is sufficient evidence to support the decision of the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed.

The claimant testified that she sustained injuries to her neck, back, and left side of her head when a computer fell on her on _____. She has remained under treatment, reached maximum medical improvement, and was assessed an impairment rating in excess of 15%. The only quarter in issue on this appeal is the 15th quarter in which the claimant was found to be entitled to SIBS by the hearing officer. It is noted that the 15th quarter filing period (December 11, 1998, through March 11, 1999) places that quarter under the "old" SIBS rules while the 16th and 17th quarters were considered under the new rules effective January 31, 1999. Texas Workers' Compensation Commission Appeal No. 991634, decided September 14, 1999 (Unpublished); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant testified that she was self-employed until early July 1998, when she could no longer work as a result of a deterioration in her physical condition and intractable pain which began sometime earlier. She has not looked for any employment. She stated she went to an emergency room and saw her doctor, Dr. A in June 1998 because her condition was getting worse. The claimant states that she is not able to work now and that the medication she is on for her pain also prevents her from being able to work because of drowsiness. She testified that she cannot maintain a household and that she has to get help from others. Medical records in evidence from Dr. A tend to document the claimant's worsening condition, particularly reports dated June 16, 1998, and later. An operational report shows that the claimant underwent surgical cervical and lumbar root blocks on July 17, 1998. Dr. A took the claimant off work and the claimant

states that status continued. The lack of improvement in her condition is shown in subsequent medical reports including a notice of February 9, 1999, giving approval for a facial prosthetic splint for chronic pain.

The hearing officer determined that during the filing period for the 15th quarter, the claimant was unable to work, as advised by her treating doctor, and that she thus satisfied the requirement to attempt in good faith to seek or obtain employment commensurate with the ability to work. While inferences different from those found supported by sufficient evidence by the hearing officer may find some support in the evidence, this is not a sound basis to disturb the factual finding of the hearing officer. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. We conclude from our review of all the evidence, including the totality of the medical evidence, that it is at least minimally sufficient to support the finding of no ability to work during the filing period for the 15th compensable quarter. Conversely, we cannot hold that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 961878, decided November 1, 1996. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge