

APPEAL NO. 000346

Following a contested case hearing (CCH) held on January 25, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the first quarter from November 13, 1999, through February 11, 2000. The claimant appeals, contending that the evidence shows an inability to work and that he has met all criteria entitling him to SIBS and requesting that the Appeals Panel reverse the hearing officer's decision and order and render a decision in his favor. The respondent (carrier) responds urging that there is sufficient evidence to support the decision and asking that it be affirmed.

DECISION

Affirmed.

The claimant, a pipefitter welders' supervisor, suffered a compensable injury when he fell off a ladder on _____; has had cervical surgery; has been under treatment; and has not returned to work. He is seeking SIBS for the first compensable quarter, the qualifying period for which ran from August 1, 1999, and to October 30, 1999. A designated doctor certified him to be at maximum medical improvement on December 11, 1998, with a 16% impairment rating. During the qualifying period, the claimant asserts, he did not have any ability to work although he did indicate that at some unspecified time he applied for several jobs but had not heard back from any of them. Regarding his ability to work, there is no question that the claimant continues to suffer the effects of his injury, that is, he continues to have chronic pain and is on various medications. A September 22, 1999, medical record from his doctor, Dr. S, states that "at this point, he is unemployable because of his chronic neck pain, right arm weakness, and the fact that he requires sedating medication." In a January 4, 2000, report, Dr. S states that with his "current symptomatology and weakness of the right upper extremity, he cannot perform his job as an air conditioner man and, because he requires a significant amount of pain relief with sedating and nonsedating medications, he likely is not employable." The claimant was examined by a carrier doctor, Dr. C, an orthopedic surgeon, who in a report dated December 11, 1998, states that, based on the records and the examination, "claimant's condition is compatible with a release to work at a light to moderate duty level with no repetitive lifting greater than 20-30 lbs."

The hearing officer found from the evidence before her that the claimant had a light-to moderate-duty level ability to work with restrictions during the qualifying period and that he did not attempt in good faith to obtain employment commensurate with his ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4) addresses good faith with regard to the requirement that an attempt in good faith be made to obtain or seek employment commensurate the ability to work as provided in Section

408.142. Good faith, under the rule, can be shown even though there is no job search if the claimant "has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work." We have noted that the current SIBS rules are more demanding than the rules prior to January 1999 and that all three elements of the rule must be met to establish good faith in a no-ability-to-work situation. Texas Workers' Compensation Commission Appeal No. 992717, decided January 20, 2000; Texas Workers' Compensation Commission Appeal No. 992197, decided November 18, 1999. Here, the hearing officer was not satisfied from the evidence presented that the requirements of the rule had been met and she determined that the claimant had some ability to work as indicated in a medical report. The rule as now composed sets forth specific criteria that must be followed in determined good faith in this setting. Texas Workers' Compensation Commission Appeal No. 992650, decided January 18, 2000; Texas Workers' Compensation Commission Appeal No. 992877, decided February 4, 2000. Clearly, the Texas Workers' Compensation Commission (Commission) mandated that certain requirements be met where it is asserted that there is no ability to work at all and they cannot be disregarded. Texas Workers' Compensation Commission Appeal No. 992692, decided January 20, 2000. We conclude that the hearing officer correctly applied the regulatory provisions. From our review of the record, we cannot conclude that her determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, our standard of review. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge