

APPEAL NO. 000898

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 March 30, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and third quarters. Claimant appealed, contending that he had no ability to work during the filing periods in question. The determinations regarding direct result, which were in claimant's favor, were not appealed. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that the hearing officer erred in determining that he is not entitled to first and third quarter SIBs. He asserts that he had no ability to work during the filing periods for the first and third quarters. Claimant contends that his inability to work was so obvious as to be irrefutable.

The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)) in effect during the filing periods in question provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "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."

The hearing officer set forth the background facts regarding claimant's injury and subsequent surgeries. The parties stipulated that: (1) claimant sustained a compensable injury on \_\_\_\_\_; (2) claimant had an impairment rating of 16%; (3) he did not commute any of his impairment income benefits; (4) the first quarter was from July 1, 1999, to September 29, 1999; and (5) the third quarter was from December 30, 1999, to March 29, 2000.

The hearing officer determined that the claimant did not sustain his burden of proving that he had no ability to work during the filing period for the first quarter, which was from March 17, 1999, to June 16, 1999. It was the hearing officer's responsibility to weigh the evidence presented and to determine what facts had been established. The hearing officer was not persuaded that the evidence from Dr. V was sufficient to demonstrate that the claimant had no ability to work in the first quarter filing period. We note that a May 1998 functional capacity evaluation (FCE) stated that claimant was able to do sedentary work, although subsequent records discussed an increase in symptoms. In April 1999, during the filing period for the first quarter, Dr. V had stated that claimant could do sedentary work. Later, in December 1999, after the filing period ended, Dr. V said that

claimant had been incapable of working from March 17, 1999, to June 16, 1999. The hearing officer weighed the conflict in these reports and determined what facts were established. We also note that in an April 1999 report, Dr. Z stated that claimant takes pain medication daily, but that “if he has a day in which he does a lot of bending or working around the house he sometimes has to take up to three or four hydrocodone.” Dr. Z’s report is some evidence that indicates that claimant was not bedridden or incapacitated to the extent that an inability to work was so obvious as to be irrefutable. Claimant acknowledged that he did not look for work in the first quarter filing period; therefore, the hearing officer properly determined that he did not make a good faith job search in light of the fact that he did not sustain his burden of proving no ability to work. The hearing officer was acting within her province as the sole judge of the weight and credibility of the evidence in so evaluating the evidence. The hearing officer could weigh the evidence from Dr. V and decide that the narratives provided did not sufficiently explain why claimant could not work at all. Our review of the record does not reveal that the hearing officer’s good faith determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse it on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We also find no reversible error in the hearing officer’s discussion of whether claimant provided a “detailed” narrative. The record does not reflect that claimant’s burden of proof was erroneously altered in this case.

Regarding the third quarter, the hearing officer determined that the claimant did not sustain his burden of proving that he had no ability to work during the filing period, which was from September 16, 1999, to December 15, 1999. Claimant underwent spinal surgery on June 29, 1999, about two and one-half months before the filing period began. In December 1999, during the filing period for the third quarter, Dr. V stated that claimant’s last FCE said claimant is not ready to return to employment, that claimant has been in rehabilitation after his June 1999 surgery, and that claimant had been incapable of working from March 17, 1999, to June 16, 1999. The hearing officer reviewed the evidence and determined what facts were established. We conclude that her determinations regarding the third quarter are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge