APPEAL NO. 000911

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 April 6, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second and third quarters. The claimant appealed and asserted that she was unable to work during the second quarter and the first part of the third quarter. She argued that a doctor for the respondent (carrier) did not perform a thorough evaluation. She said that she returned to work at her physical capacity during the third quarter. The claimant argued that she is entitled to SIBs. The carrier responded that the claimant has not proven a good faith search for employment commensurate with her ability to work under the SIBs rules.

DECISION

We affirm the hearing officer's decision.

The claimant, a bus driver, said that she was struck by a "lift" mechanism on a special vehicle for the disabled on _____, and, while not knocked down, sustained a head and neck injury. She said she was thereafter precluded from driving. The claimant contended that during the second and most of the third quarter qualifying periods, which ran from March 6 through June 4, 1999, and June 5 through September 3, 1999, she had the inability to work at all due to headaches, blurry vision, neck pain, and generalized pain throughout her body. She said that she had not been released to work until August 1, 1999, and was then released with restrictions and only to six hours a day. The claimant said she than made one job search resulting in work as her apartment complex manager, for six hours a day (doing general office tasks). The claimant said she was paid $150.00 a month for this work and given an additional $100.00 discount from her rent.

The claimant was treated during the second quarter by Dr. A, who, on March 4, 1999, wrote a brief letter saying that the claimant was not able to perform any kind of work due to continued medical problems and herniated cervical discs. During the third quarter, the claimant was also treated by Dr. S, who wrote briefly on June 10, 1999, that the claimant was unable to perform any type of "gainful employment." Dr. S stated his opinion that the claimant remained a "qualified disabled patient" and should have her SIBs continued. A January 7, 2000, letter with Dr. S's signature stamp says that the claimant was released August 1, 1999, to light duty and "is" able to work six hours a day.

A functional capacity evaluation conducted July 15, 1999, found that the claimant could not go back to her previous medium-duty work. While a level was not expressly stated, the evaluator found that the claimant could lift 25 pounds occasionally, 12 pounds frequently, and 4 pounds constantly.

The claimant was examined by Dr. F, a doctor for the carrier, on June 10, 1999. He noted that previous objective tests, including a 1997 cervical MRI, were unremarkable. Dr. F found nonanatomical complaints of pain and a high Waddell's score. He opined that the claimant had a resolved soft tissue injury and could return to unrestricted work.

The hearing officer has quoted the applicable rules at length. To the extent an injured worker seeks to satisfy the "job search" requirement for SIBs with a contention that he is unable to work, a detailed narrative must be produced from a doctor which describes how an injury results in the total inability to work. This requirement is not satisfied by a bald statement from a doctor that a worker is unable to work or unable to perform "gainful employment." There must be no records showing an ability to work. Moreover, as the record showed, the claimant, by her own testimony, was working six hours a day after August 1, 1999. The hearing officer could reasonably believe that this ability did not materialize in one day and that the more credible evidence suggested that the claimant had ability to work all along. He could also believe that the job she had was below, and, therefore, not commensurate with, her ability to work.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). In considering all of the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Robert W. Potts
Appeals Judge