

APPEAL NO. 000924

On April 12, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue by deciding that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The new SIBs rules effective January 31, 1999, apply to this case. Claimant testified that she is 65 years of age and that she was injured while working as a cashier when she fell on a cement walkway at work on _____, hitting her head, back, and other body parts. Dr. I, the designated doctor, assigned claimant a 24% impairment rating (IR), 11% for impairment of her cervical, thoracic, and lumbar spine, and 15% for minimal disturbance and comprehension and production of language symbols of daily living. Claimant testified that she is unable to work because of physical and mental problems that resulted from her injury and that she was undergoing physical therapy during the qualifying period. Prior to the qualifying period, claimant participated in a Texas Rehabilitation Program (TRC). A TRC counselor wrote in April 1999 that claimant is not a candidate for employment due to her cognitive limitations, decreased endurance, and residual deficits from her injury. The parties stipulated that claimant did not commute impairment income benefits; that she reached maximum medical improvement on December 10, 1996, with a 24% IR; that the sixth quarter was from July 28 to October 26, 1999; and that claimant did not seek employment during the qualifying period for the sixth quarter. It is undisputed that claimant did not work during the qualifying period for the sixth quarter. There is no appeal of the hearing officer's finding that claimant's unemployment during the qualifying period is a direct result of her impairment from her compensable injury. This case concerns whether claimant met the SIBs requirement that she attempt in good faith to obtain employment commensurate with her ability to work during the qualifying period. Section 408.142(a)(4); Rule 130.102(b)(2).

From December 1998 through December 1999, Dr. R, claimant's treating doctor, reported that claimant is unable to work due to physical, cognitive, and psychological deficits and he explained what those deficits are. Claimant underwent a functional capacity evaluation on July 8, 1999, and the physical therapist reported that, from a physical standpoint, claimant could probably perform a sedentary job that required no material handling for two to three hours a day, but that claimant's report of cognitive limitations was beyond the scope of the evaluation. Dr. N examined claimant and reviewed her medical records at carrier's request in April 1999 and he reported that claimant has mild cognitive

limitations and that she could return to part-time light-duty work as a cashier and to sedentary work as a real estate broker (claimant said that she has an inactive real estate broker's license).

During the qualifying period, Rule 130.102(d)(3) provided 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. Rule 130.102(e) provided, in pertinent part, that, except as provided in subsections (d)(1), (2), and (3) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

The hearing officer found that during the qualifying period, claimant had the ability to work at a sedentary job and that claimant did not attempt in good faith to obtain employment commensurate with her ability to work. The hearing officer concluded that claimant is not entitled to SIBs for the sixth quarter. Claimant contends that the hearing officer's findings on ability to work and good faith are against the great weight of the credible evidence and that the hearing officer used an improper legal standard. There is conflicting evidence in this case regarding claimant's ability to work. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. We do not perceive that the hearing officer used an improper legal standard. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge