

## APPEAL NO. 000957

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 6, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth and fifth quarters. Claimant appealed, contending that she had no ability to work during the qualifying periods in question. The respondent (carrier) responded that the Appeals Panel should uphold the hearing officer's decision and order. The direct result determination in claimant's favor was not appealed.

### DECISION

We affirm.

Claimant contends that the hearing officer erred in determining that she had an ability to work during the qualifying periods for the fourth and fifth quarters and that she is not entitled to SIBs for those quarters. Claimant sustained a compensable injury that included her wrist and chest on \_\_\_\_\_, in a motor vehicle accident (MVA). Claimant testified generally about her inability to do housework and other activities of daily living, describing her severe pain and medications taken during the qualifying periods. The fourth quarter was from August 15, 1999, to November 13, 1999, and the fifth quarter was from November 14, 1999, to February 12, 2000.

In a December 8, 1999, report admitted at the CCH, Dr. M said that: (1) claimant exhibited significant psychological overlay and disability magnification; (2) claimant would have great difficulty securing gainful employment "with her current physical diagnoses"; (3) at best, claimant would be limited to sedentary work; and (4) "psychologically, there is evidence to suggest that multiple issues exist that would prevent [claimant] from obtaining and maintaining employment." In a May 12, 1999, letter, Dr. JM stated that claimant could return to work.

The 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 version of Rule 130.102(d)(3) in effect during the qualifying periods in question 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. The version of Rule 130.102(e) in effect 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.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Regarding the fourth quarter, the hearing officer determined that: (1) claimant's medical evidence did not include a narrative that said that claimant is unable to work in any capacity; (2) claimant was "not totally unable" to work during the qualifying period; and (3) claimant did not make a good faith effort to seek employment commensurate with her ability to work. The hearing officer concluded that claimant is not entitled to SIBs for the fourth quarter. In making her determinations, the hearing officer indicated that it had not been established that the psychological problems were due to the compensable injury. Claimant's evidence indicating that she had no ability to work is based on psychological problems, which the hearing officer determined are not part of the injury. Any inability to work must be due to the compensable injury. The determination that claimant did not meet her burden of proof regarding good faith and no ability to work is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We conclude that the hearing officer did not err in determining that claimant is not entitled to fourth quarter SIBs. Regarding fifth quarter SIBs, again claimant did not meet her burden to prove that she had no ability to work. The hearing officer noted that claimant did not meet her burden to prove that her activities related to self-employment or a job search took place every week of the qualifying period. We note that there was no evidence that claimant's self-employment constituted work relatively equal to her ability to work. We conclude that the hearing officer did not err in determining that claimant is not entitled to fifth quarter SIBs.

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge