APPEAL NO. 001022

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 24, 2000. The appellant (claimant) and the respondent (self-insured) agreed that the qualifying period for the third quarter for supplemental income benefits (SIBs) began on October 27, 1999, and ended on January 25, 2000. The hearing officer determined that during that qualifying period the claimant was unemployed and that her unemployment was a direct result of her impairment from the compensable injury. Those determinations have not been appealed and have become final under the provisions of Section 410.169. The hearing officer found that during the qualifying period the claimant was not totally unable to perform any type of work in any capacity; did not seek employment commensurate with her ability to work during every week; and did not make a good faith effort to seek employment commensurate with her ability to work and concluded that the claimant is not entitled to SIBs for the third quarter. The claimant appealed, stated why she felt that the determinations of the hearing officer are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she is entitled to SIBs for the third quarter. The self-insured responded, stated that information outside the record should not be considered on appeal, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

In her appeal, the claimant stated that shortly after the qualifying period ended, she was hospitalized. As a general rule, the Appeals Panel does not consider information not in the record of the CCH. The claimant has not presented information to indicate that the Appeals Panel should reverse the decision of the hearing officer and remand for consideration of newly discovered evidence. We will not consider information not in the record of the CCH.

We first address the determination that during the qualifying period the claimant was not totally unable to perform any type of work in any capacity. Two of the criteria in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)) are that the claimant was unable to perform any type of work in any capacity and provided a narrative report from a doctor which specifically explains how the injury caused a total inability to work. The claimant contended that a report from Dr. C dated October 19, 1999, met those requirements. That letter states:

> This is to certify that I have been treating the above named patient beginning 10-22-96. She has undergone lumbar decompression and fusion 2-27-99. She has been followed up post-operatively with scans and even myelogram. Most recently I have referred her to [Dr. F] in _____ who in turn

> recommends she see [Dr. S] for pain management at this time. At the present time, she is unable to do any type of work whatsoever.

In the discussion in her Decision and Order, the hearing officer explained why the claimant did not meet the requirements of Rule 130.102(d)(3). The claimant also stated in her appeal that the carrier did not present evidence that the claimant had any ability to work. The burden was clearly on the claimant to prove by a preponderance of the evidence that she met the requirements in Rule 130.102(d)(3). The hearing officer's determination that during the qualifying period the claimant was not totally unable to perform any type of work in any capacity is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In the statement of the evidence in her Decision and Order, the hearing officer summarized the evidence concerning the claimant's job search during the qualifying period. The hearing officer made a determination that the claimant did not seek employment commensurate with her ability to work during every week of the qualifying period. The parties agreed that the qualifying period began on October 27, 1999. The Statement of Employment Status (TWCC-52) dated January 20, 2000, indicates that the first job search occurred on November 9, 1999. The record contains some job applications, but none of them are dated prior to November 9, 1999. Rule 130.102(d)(5) and Rule 130.102(e) provide that an injured employee who has not returned to work and is able to return to work in any capacity shall look for work every week of the qualifying period and shall document his or her job search. In the discussion in her Decision and Order, the hearing officer stated that the claimant did not seek employment during the first week of the qualifying period and made additional comments on the effort of the claimant to seek employment. The determinations of the hearing officer concerning the claimant's efforts to seek employment during the qualifying period are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Pool*, supra;* King, *supra.*

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge