

## APPEAL NO. 001032

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 7, 2000. The hearing officer determined that: (1) the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters. Claimant appealed, contending that she met the good faith SIBs requirements, she had no ability to work, and she is entitled to SIBs. The respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order. The parties stipulated that carrier timely contested SIBs entitlement and the hearing officer's determination regarding claimant's impairment rating was not appealed.

### DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she is not entitled to SIBs for the first three quarters. Claimant asserts that the uncontroverted medical evidence established and adequately explained why she had no ability to work during the qualifying periods for these three quarters.

The criteria for entitlement to SIBs are set forth in Sections 408.142(a) and 408.143. The law regarding SIBs, good faith, and an assertion that there was no ability to work at all during the qualifying periods is discussed in Texas Workers' Compensation Commission Appeal No. 000004, decided February 15, 2000. The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)) then in effect provided that an employee may be in good faith 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 Appeals Panel's standard of review in this case is also set forth in Appeal No. 000004.

The hearing officer summarized the background facts in his decision. Briefly, after claimant's compensable low back injury in \_\_\_\_\_, she underwent spinal surgery in September 1997. The medical records from Dr. F note claimant's continuing problems and pain and mention possible additional surgery. The parties stipulated that: (1) claimant sustained a compensable low back injury on \_\_\_\_\_; (2) claimant did not commute any of her impairment income benefits; and (3) the qualifying periods for the first three quarters were from April 8, 1999, through January 5, 2000.

The direct result determination in claimant's favor was not appealed. The hearing officer determined that: (1) claimant did not meet her burden to prove that she had no ability to work during the qualifying periods in question; (2) claimant did not look for work and was unemployed during the qualifying periods in question; and (3) claimant is not entitled to SIBs.

Claimant had the burden to prove that she had no ability to work. Texas Workers' Compensation Commission Appeal No. 950582, decided May 25, 1995. The hearing officer was the sole judge of the credibility of the evidence and he judged the credibility of the medical evidence regarding whether claimant had an ability to work during the qualifying period. The hearing officer specifically found that claimant failed to meet her burden to establish an inability to work. There was evidence from Dr. F that claimant has difficulty with any activity, that she cannot sit or stand for long periods, that she could reinjure herself if she went back to work, and that she is "totally disabled from any type of gainful employment." The hearing officer judged the credibility of this evidence and made his determinations regarding claimant's ability to work based on the evidence before him. Because the hearing officer determined that claimant was able to do some type of work, and claimant did not look for work, the hearing officer did not err in determining that claimant did not meet the good faith SIBs criterion. The hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we will not substitute our judgment for his. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge