APPEAL NO. 001164

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 May 1, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the seventh quarter. The claimant appealed, contending both that he had a total inability to work in any capacity and that his 13 job contacts during the qualifying period is what the law requires. The claimant also contends that he was paid SIBs for the fifth and sixth quarters for similar job contacts so that should entitle him to SIBs for the quarter at issue. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant had been employed as a pipefitter/welder when he sustained a neck and right shoulder injury while working on an engine part. The parties "agreed" that the claimant had sustained a compensable injury on _____; that impairment income benefits (IIBs) were not commuted; and that the "filing" (qualifying) period was from November 1, 1999, through January 30, 2000.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the IIBs period expires if the employee has: (1) an impairment rating of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. At issue in this case is subsection (4), whether the claimant made the requisite good faith effort to obtain employment commensurate with his ability to work. The hearing officer made no findings on the direct result requirement.

The standard of what constitutes a good faith effort to obtain employment was specifically defined and addressed after January 31, 1999, in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) and (e) (Rule 130.102(d) and (e)). The requisite good faith effort to obtain employment commensurate with the ability to work can be asserted by meeting the requirements of Rule 130.102(d)(3), the version then in effect. That rule provides that the good faith element is met when the injured employee is (1) unable to perform any type of work in any capacity; (2) that a narrative from a doctor specifically explains how the injury causes a total inability to work; and (3) that "no other records show that the injured employee is able to return to work."

The claimant's treating doctor is Dr. C, who, in a report dated July 8, 1998, commented that the claimant had "severe restrictions" and was "limited to a sedentary lifting capacity from the waist to the shoulder and above the shoulder." Dr. L further

commented that the claimant would be unable to return to his preinjury job and that he is "completely and totally disabled" except for a "few occupations that . . . require only sedentary work." In reports dated November 5, 1999, and February 2, 2000, Dr. L states that the claimant "is totally and completely disabled from all occupations" and that he has "three severe cervical disc herniations and a severe shoulder impingement syndrome." A report dated January 21, 2000, from Dr. K indicates that the claimant gave "a significant cardiac history" (unrelated to the compensable injury) and that Dr. K is suspicious that the range of motion "does not represent [the claimant's] true limitations." Although the hearing officer made no specific findings regarding Rule 130.102(d)(3) in his Statement of the Evidence, he comments:

> [Dr. L] described the Claimant's problems and limitations only in generalities which were insufficient to show that the Claimant was totally unable to perform any work.
>
> * * * *
>
> All in all, the Claimant's actions and testimony indicated that he does have some ability to work, but he has no serious intent to obtain work consistent with his ability to work.

From those comments, we can reasonably infer that the hearing officer found that the claimant had not met the requirements of Rule 130.102(d)(3) showing an inability to work in any capacity and that Dr. L's reports do not provide a narrative that explains how the injury causes a total inability to work.

The good faith requirement may also be met by complying with Rule 130.102(e), which provides, in pertinent part, that 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. Rule 130.102(e) goes on to list some of the factors which may be considered in the job search, such as the number of jobs applied for throughout the qualifying period, applications or resumes which document the efforts, cooperation with vocational rehabilitation services, the amount of time spent in looking for employment, and any job search plan by the injured employee. The claimant's Application for [SIBs] (TWCC-52) lists 13 job contacts made between November 6, 1999, and January 28, 2000, with the dates of contact being 6 to 10 days apart. The claimant testified at the CCH that he did not believe he was able to work but that he made the 13 applications because that was what "the law" required him to do in order to qualify for SIBs. That position is reiterated in the claimant's appeal where he states, "[t]he law is 13 job applications." The hearing officer determined that those efforts did not constitute an "attempt in good faith to obtain employment commensurate with the Claimant's ability to work," apparently applying some of the criteria of Rule 130.102(e). Although the hearing officer made no finding on direct result, we hold that the hearing officer's findings on good faith are supported by the evidence and are dispositive of the issue of entitlement to SIBs for the seventh quarter.

The claimant, in his appeal, repeats testimony from the CCH about how painful it is for him to drive; that his wife drives him; and that, while he has an "ability to do small tasks," he pays dearly for those efforts afterwards. The claimant also contends that the carrier paid benefits for the fifth and sixth quarters on essentially the same evidence; therefore, he should be entitled to SIBs for the seventh quarter when his "injury is getting worse." Sections 408.143(b) and (c) indicate that each SIBs quarter is considered separately in determining whether payment is due. *See also* Texas Workers' Compensation Commission Appeal No. 971537, decided September 17, 1997 (Unpublished).

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge