APPEAL NO. 001168

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 May 2, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 14th quarter. The claimant appeals, urging that he had no ability to work; that there is no evidence that he had any ability to work; that his activities are not competent evidence of a residual capacity to work; that the opinion of the hearing officer is not supported by any competent evidence; and that the hearing officer has made a medical judgment, which is not permitted. The respondent (self-insured) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The only issue in this case is whether the claimant made the required good faith job search effort. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)), the version then in effect, provides 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 work.

The claimant did not seek employment during the qualifying period. The parties stipulated that the claimant sustained a compensable injury on _____, and that the qualifying period for the 14th quarter ran from November 6, 1999, through February 4, 2000. The claimant testified that he is 53 years old; that he had a lumbar laminectomy at L4-5 in 1995; that he has continuous pain in his lower back and legs; that he is unable to work; and that he cannot look for work because of his back pain. The claimant said that he can drive, perform chores around the house, cook, clean, and shop.

The medical records of the claimant's treating doctor, Dr. T, indicate that the claimant is completely and totally disabled from any and all employment. Dr. T's medical records state that the claimant has difficulty performing simple tasks of daily living; that the claimant can walk 30 to 50 feet at a time but then must rest; and that the claimant has very severe low back pain and leg pain that worsens with any type of activities that exceed sedentary actions. Dr. T recommended a spinal cord stimulator during the qualifying period.

The self-insured presented two videotapes showing the claimant's activities. The videotape during the qualifying period shows the claimant driving his truck and entering and exiting a store. The self-insured asserted that the videotapes demonstrate that the

claimant can perform activities without any difficulty and that the claimant is not totally incapacitated from any type of work.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In this case, the claimant presented evidence tending to demonstrate that he has no ability to work. The hearing officer had to judge the credibility of the evidence before him in order to determine whether the evidence presented was sufficient to meet the criteria of Rule 130.102(d)(3).

The hearing officer found that Dr. T's records failed to set forth in specific narrative form how the claimant's injury prevents him from doing even part-time, sedentary work. Whether the claimant is unable to work and whether a narrative report specifically explains how the injury caused a total inability to work were factual questions. The hearing officer was not bound by the opinion of Dr. T despite there being no other medical records tending to demonstrate that the claimant was able to return to work. In assessing the credibility of Dr. T's narrative reports, the hearing officer properly considered all of the evidence, which included the claimant's testimony and videotaped activities.

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 and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's determinations that the claimant had some ability to work; made no effort, good faith or otherwise, to secure employment commensurate with his abilities; and is not entitled to SIBs for the 14th quarter.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge