

## APPEAL NO. 001236

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 March 27, 2000, with the record closing on April 26, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th compensable quarter. The claimant appealed, contending that she had no ability to work during the qualifying period for the 12th quarter. The respondent (carrier) responded that the Appeals Panel should affirm the decision and order. The direct result determination in claimant's favor was not appealed.

### DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she is not entitled to SIBs. She contends that she had no ability to work during part of the qualifying period, that she did seek work and contacted the Texas Rehabilitation Commission and the Texas Workforce Commission, and that she met her burden of proof regarding the good faith SIBs criterion.

The parties stipulated that the qualifying period for the 12th quarter was from September 22, 1999, to December 21, 1999. Claimant testified that her compensable injury was to her back, buttocks, and knee. She said her September 1997 back surgery was not successful and did not help her. Claimant said that at the beginning of the qualifying period, until October 5, 1999, she did not look for work because of severe gastrointestinal problems and recovery from that illness. Claimant testified that she has good days and bad days; that she is sometimes able to sweep, mop, and do laundry; that she does not lie around and watch television all day; that she did not feel that she was able to work during the qualifying period; and that she thought at the time of the hearing that she could do some light-duty work.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)) provides in pertinent part that "[a]n 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; . . ." Rule 130.102(e) provides in pertinent part that "[e]xcept as provided in subsections (d)(1), (2), and (3) of this section, 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." Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. Our appellate standard of review is set forth in Section 410.165(a); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Under the facts of this case, claimant had the burden to prove that she had no ability to work due to the compensable injury during the weeks in the qualifying period when she did not look for work. Texas Workers' Compensation Commission Appeal No. 991616, decided September 15, 1999. The hearing officer was the sole judge of the credibility of the medical evidence and determined whether the medical evidence showed that claimant had no ability to work. There is medical evidence from Dr. S, claimant's treating doctor, dated during the qualifying period, which states that claimant was unable to work at her occupation or any other occupation. However, the hearing officer judged the credibility of this medical evidence. There was evidence from Dr. W that claimant was able to do some work. The hearing officer specifically found that claimant was capable of doing some work, that she did not look for work every week of the filing period, and she did not meet the good faith SIBs requirement. The hearing officer made his determinations regarding good faith and ability to work based on the evidence before him. Because the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we will not substitute our judgment for his. Cain.

We affirm the hearing officer's decision and order.

---

Judy L. Stephens  
Appeals Judge

CONCUR:

---

Kathleen Decker  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge