

APPEAL NO. 001378

On May 23, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th and 12th quarters. Claimant requests that the hearing officer=s decision be reversed and that a decision be rendered in her favor. Respondent (carrier) requests that the hearing officer=s decision be affirmed.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 130.102 (Rule 130.102). The parties stipulated that on _____, claimant sustained a compensable injury; that she reached maximum medical improvement on December 11, 1995, with a 28% impairment rating; that she did not commute impairment income benefits; that the 11th quarter was from January 18, 2000, to April 17, 2000, with a qualifying period from October 5, 1999, to January 4, 2000; and that the 12th quarter was from April 18, 2000, to July 17, 2000, with a qualifying period from January 5, 2000, to April 2, 2000. There is no appeal of the hearing officer=s finding that claimant=s unemployment during the qualifying periods for the 11th and 12th quarters was a direct result of her impairment from her compensable injury. The SIBs criterion in dispute is whether claimant attempted in good faith to obtain employment commensurate with her ability to work during the relevant qualifying periods. Section 408.142(a)(4); Rule 130.102(b)(2). Claimant contends that she had no ability to work during the relevant qualifying periods. It is undisputed that during the relevant qualifying periods claimant was not employed and did not look for work.

According to medical reports, claimant sustained a repetitive trauma injury while working as an airline reservation agent for employer. Claimant said that she injured her hands, shoulders, and neck. Claimant had bilateral carpal tunnel releases in 1994 and a fusion from C5 through C7 in 1996. Claimant said that during the relevant qualifying periods she had pain in her neck, shoulders, and hands; that she had headaches; that she was on pain medications; that she could drive; and that she could do some grocery shopping and some cooking.

Dr. W, who was claimant=s treating doctor, wrote in July 1998 that claimant felt that she would not improve enough to return to work and desired to be declared permanently disabled. Dr. W wrote that based on his evaluations of claimant over the last several years, he did not believe that claimant=s symptoms will improve enough for her to return to work. Claimant said that Dr. W referred her to Dr. M because Dr. W quit treating workers=compensation patients. In December 1999, Dr. M diagnosed claimant with bilateral carpal tunnel syndrome (CTS), a disc herniation at C4-5, a spur at C6-7, and a left rotator cuff problem, and made referrals to

Dr. R for the neck condition and to Dr. D for the CTS and rotator cuff. Dr. M wrote in December 1999 and in January, February, and May 2000 that claimant is not able to return to work and that she is 100% disabled. Dr. R wrote in February 2000 that claimant has disc protrusions at C2-3, C3-4, and C4-5, with left cervical radiculopathy and headaches, and that he recommends conservative treatment by Dr. M for claimant's neck because additional surgery would result in a four-level fusion with restricted range of motion. Claimant said that Dr. D has recommended shoulder surgery.

Dr. DI evaluated claimant at carrier's request in May 1999 and wrote that his evaluation was essentially of claimant's hands and upper extremities and that her neck should be evaluated separately. Dr. DI wrote that he felt that claimant can work with her hands and that she should be doing as normal an activity work-wise as possible. Dr. DI stated that he felt that claimant could do some keyboarding, but that claimant would have to decide whether she wants to work at employer doing that type of work. Dr. DI reevaluated claimant at carrier's request in April 2000 and wrote that he did not see any changes from the last time he evaluated her, that at the time of the last evaluation he felt that claimant could be back working, and that he feels the same after the current evaluation. He also stated that from the point of view of claimant's hands, he feels that claimant is functional, but that any questions regarding claimant's neck would have to be put to Dr. M and Dr. R. As noted, Dr. M sent claimant to Dr. R for evaluation of her neck problems and Dr. R recommended conservative cervical treatment by Dr. M and Dr. M has reported that claimant is unable to work.

At the beginning of the qualifying period for the 11th quarter, Rule 130.102(d)(3) provided 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 to work. When Rule 130.102 was amended effective November 28, 1999, paragraph (3) of subsection (d) became paragraph (4) of subsection (d). Rule 130.102(e) provides in pertinent part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, 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.

It is undisputed that claimant made no attempt to obtain employment during the qualifying periods for the 11th and 12th quarters. Claimant appeals the hearing officer's findings that during the qualifying periods for the 11th and 12th quarters claimant had some ability to work and that during those qualifying periods claimant did not make a good faith effort to obtain employment commensurate with her ability to work. Claimant also appeals the hearing officer's conclusions and decision that claimant is not entitled to SIBs for the 11th and 12th quarters. Claimant contends that her testimony and the reports of Drs. M and R showed that she had no ability to work during the relevant qualifying periods and that Dr. DI's reports do not show an ability to work because Dr. DI reports only concern claimant's hands and not

her neck or shoulders. It is apparent from the Statement of the Evidence portion of the hearing officer's decision that the hearing officer determined that Dr. M's reports did not sufficiently explain why claimant is unable to work and that Dr. D's reports established that claimant has some ability to work. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge