APPEAL NO. 001503
FILED AUGUST 4, 2000

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 8, 2000, in _____, Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 16th quarter. The claimant appealed, contending that he had no ability to work during the qualifying period in question and that he is entitled to SIBs. The respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he is not entitled to 16th quarter SIBs. He asserts that he had no ability to work during the qualifying period and that he met his burden of proof regarding the good faith SIBs criterion.

The hearing officer determined that the qualifying period for the 16th quarter was from November 27, 1999, to February 26, 2000. Claimant testified that he sustained a compensable back injury on _____, when boxes fell on him and he grabbed them as they fell. Claimant said he has undergone two major back surgeries and two minor ones, with regarding to this injury. The last surgery was in June 1999. Claimant said he was in a full-time, pain management program after the qualifying period ended, from late March 2000 through May 5, 2000; that it helped a small amount; but that his overall condition has deteriorated. Claimant said he plans on working with the Texas Rehabilitation Commission in order to find some retraining "that he can do" with his disability.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d))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), (3) and (4) 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 _____. When a claimant has an ability to work during the

qualifying period, that claimant is required to look for work every week of the qualifying period. The job search actually required to be undertaken does depend on the ability that the claimant has, as a claimant must search for work "commensurate with the ability to work." A claimant may search for work by looking in the newspaper, contacting the Texas Workforce Commission, or using a computer to search, and documenting these activities. 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.

Claimant had the burden to prove that he had no ability to work due to the compensable injury during the qualifying period. 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. The hearing officer specifically found that claimant was capable of doing sedentary work. There was evidence from Dr. O, dated in March 1999, that claimant "in all probability can do sedentary work." In January 2000, Dr. O again indicated that claimant was able to work with restrictions. In a March 2000 letter, claimant's doctor, Dr. V, disagreed that claimant was able to work. Because claimant did not then look for work every week of the qualifying period, the hearing officer could determine that he did not meet the good faith SIBs requirement.

Claimant contends that the hearing officer should have disregarded Dr. O's report because of inconsistencies in the report and because Dr. O represented that he took measurements, when claimant states that this is not true. However, these complaints concern the credibility of this medical evidence, which was a question for the hearing officer to decide. Claimant asserts that he did know about Dr. O's letter until the end of the qualifying period. However, claimant was required to look for work because he was able to work. He was not excused from this requirement during the time before he received Dr. O's report. Claimant contends that he has serious, lasting effects from his injury, that he has not had adequate treatment, and that he can tolerate very little activity. Again, these factors were for the hearing officer to consider in making his determinations. We have reviewed the record, the briefs, and the hearing officer's decision, and we conclude that 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. Cain, *supra*.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge