APPEAL NO. 001596

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 30, 2000. The hearing officer determined that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters; that the claimant is entitled to SIBs for the third through fifth quarters; and that the appellant (self-insured) is not liable for the second through fifth quarters of SIBs because the claimant did not timely file Application for Supplemental Income Benefits (TWCC-52) forms for those quarters. The self-insured appeals only the finding of entitlement to third through fifth quarter SIBs, contending that this determination is against the great weight and preponderance of the evidence. The claimant replies that the decision and order of the hearing officer should be affirmed. The determinations not appealed have become final. Section 410.169.

DECISION

Affirmed.

The claimant sustained a low back injury on _____, while working for the self-insured. Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the impairment income benefits (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. Entitlement to SIBs for any quarter depends on whether the claimant meets the criteria during the qualifying period, which is the 13 consecutive weeks that end on the 14th day before the beginning date of the SIBs quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.101(4) (Rule 130.101(4)). The third SIBs quarter began on July 15, 1999, and the fifth SIBs quarter ended on April 14, 2000. The self-insured argues on appeal that the hearing officer's factual findings that the claimant established both a direct result and a good faith effort for the third through the fifth quarters are not supported by sufficient evidence.

We conclude that evidence in the record of a serious injury with lasting effects and of the claimant's inability to return to his previous employment was sufficient to support the direct result findings. *See* Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996.

Rule 130.102(d)(1) provides that an injured employee has made the required good faith effort to obtain employment if the employee "has returned to work in a position which is relatively equal to the injured employee's ability to work." We have held that the focus of the good faith analysis in cases of underemployment is on the nature of the duties of the employment and whether the duties meet the claimant's physical restrictions and any restrictions as to number of hours per day or per week that the claimant can work. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000. In

each of the qualifying periods in issue, the claimant worked approximately 20 hours per week as a driver for his treating doctor, Dr. R. The claimant testified that this met his physical restrictions because each trip was no more than one hour and forty-five minutes and he could rest between trips. The only medical evidence of job restrictions was a limited-duty release signed by Dr. R on February 9, 1998, more than a year before the relevant qualifying periods. This release limited the claimant to one to two hours per day of standing/walking and one to two hours of sitting per day with no repetitive motion. Dr. R's extensive treatment records through January 4, 2000, reflect little change in the claimant's condition and pain. The hearing officer concluded that this work history was consistent with the claimant's restrictions.[1] In its appeal, the self-insured argues that there were essentially no medical restrictions on the hours per day or week that the claimant could work and that the claimant should have looked for full-time work or for more hours of work than he was working. We cannot agree that the medical evidence mandated this conclusion. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we conclude that there was sufficient evidence to support the hearing officer's determinations that the claimant had physical restrictions, both in terms of nature of the duties he could perform and hours he could work, and that the claimant satisfied the requirement to make a good faith job search effort commensurate with this ability by virtue of his actual part-time employment.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge

[1]We note that the better practice would have been for the hearing officer to make findings of fact which tracked the language of Rule 130.102(d)(1).