

APPEAL NO. 001678

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 July 5, 2000. The hearing officer determined that the respondent (claimant) is "not entitled" to supplemental income benefits (SIBs) for the second quarter. Claimant did not appeal this determination. The hearing officer also determined that claimant is entitled to SIBs for the first, third, and fourth quarters. The appellant (carrier) appeals both the good faith and direct result determinations in claimant's favor regarding the first, third, and fourth quarters, contending that claimant was able to work during the applicable qualifying periods.

DECISION

We affirm.

Carrier complains that the hearing officer determined that claimant had no ability to work during the qualifying periods for the first, third, and fourth quarters and that he is entitled to SIBs. Carrier contends that in January 1998, claimant's surgeon, Dr. K, had released claimant to return to work.

The hearing officer's decision contains a summary of the evidence. Briefly, claimant testified that he fell off of a roof, fracturing his heels and his thoracic spine. Claimant's treatment included eight spinal surgeries and treatment for muscle spasms, partial paralysis, infections, coma due to infection, impotence, and bowel and bladder dysfunction. Before his injury, claimant had worked as a roofing estimator and consultant, which required him to climb on roofs to estimate damage and make temporary repairs. The qualifying periods for the three quarters in question ran from May 6, 1999, through August 4, 1999; and from November 17, 1999, to May 16, 2000.

We have applied our standard of review and reviewed the evidence in this case. Texas Workers' Compensation Commission Appeal No. 000384, decided April 6, 2000; Texas Workers' Compensation Commission Appeal No. 000227, decided March 21, 2000. As noted by the hearing officer, Dr. K did release claimant to return to work. However, after the work release, it was determined that claimant's hand injury was part of his compensable injury. Claimant said he then began receiving treatment so that he could regain some ability to write. Claimant testified that he talked to Dr. K about obtaining a work release, and attempted to return to work several times after January 1998. He said that he had trouble sitting and standing, that he could not concentrate, and that he could not write or even print until mid-May 2000. Claimant said Dr. K released him to return to work, but that his problems with his right upper extremity had not been addressed at that time. Claimant said he attempted to answer phones for his daughter at her office, but he could not do the work due to his lack of concentration. He testified that he did not accurately record incoming messages, which caused problems at his daughter's office. At the hearing, claimant indicated that his condition has begun to improve and that it is easier for him to drive and write.

The hearing officer determined that claimant's medical records explained why the injury caused an inability to work and that no other record showed that he was able to return to work. Regarding Dr. K's work release, we note that this was written in January 1998 by a doctor who addressed only claimant's spinal problems, and before claimant's upper extremity problems were addressed. Further, there was evidence that, after Dr. K issued a work release, claimant attempted to return to work, was not able to do so, and was taken off work by Dr. H. After reviewing the record, 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge