APPEAL NO. 001738

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 July 6, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter because he did not make a good faith search for employment commensurate with his ability to work. The claimant appeals and argues that he proved he had no ability to work. The respondent (carrier) responds that the claimant had some ability to work and the hearing officer's decision is correct.

DECISION

We affirm the hearing officer's decision.

The claimant injured his right side on _____. He underwent two spinal surgeries, the most recent being January 27, 1999. The claimant testified that his treating doctor, Dr. H, had told him he could not work.

The claimant did not search for work during the qualifying period, which ran from December 4, 1999, through March 17, 2000. The only medical evidence that the claimant submitted was from Dr. M, his spinal surgeon, who noted that the claimant was doing better on June 24, 1999, and had no pain in his back. However, Dr. M said that the claimant reported balance problems. Dr. M ran tests to ascertain if this was due to the cervical spine and stated that it was not. The claimant said that Dr. M had not told him anything about his ability to work. On July 29, 1999, Dr. M stated that he did not believe that the claimant's neuropathy problems were related to his compensable injury.

There was in evidence a document entitled work status information dated March 9, 2000, on which was written "no work." The document was simply signed with the doctor's last name, although other correspondence from Dr. M was signed with his first initials and last name. The document does not explain the basis for "no work." The claimant described his activities and asserted he was only out of bed for about two hours a day. He asserted that the day of the CCH was the first time he had driven a car in a month.

On May 9, 2000, the claimant was seen by Dr. C who stated he had the ability to work light to moderate duty. As noted in the hearing officer's summary of the evidence, the claimant had a history of alcohol abuse and his balance problems were felt to be related to that or to a small stroke.

There are four eligibility criteria that must be met to qualify for SIBs set out in Section 408.142(a): that the employee "(1) has an impairment rating of fifteen percent or more . . . ; (2) has not returned to work or has returned to work earning less than eighty percent of the employee's average weekly wage as a direct result of the employee's impairment; (3) has not elected to commute a portion of the impairment

income benefit . . . ; and (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work."

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) defines good faith as follows:

> Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
>
> (1) has returned to work in a position which is relatively equal to the injured employee's ability to work;
>
> (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission during the qualifying period;
>
> (3) 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; or
>
> (4) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

We agree with the hearing officer's application of this rule and find sufficient support for his determination that the claimant failed to present the required narrative of his total inability to work, as set out in Rule 130.102(d)(3). The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Thomas A. Knapp
Appeals Judge