

APPEAL NO. 002041

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 13, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. Claimant appealed the good faith and direct result determinations on sufficiency grounds. 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 first quarter SIBs. Claimant asserted that: (1) he had severe pain and spasm in his back during the qualifying period; (2) he was taking pain medications for his injury during the qualifying period; (3) Dr. B, his treating doctor, maintained him in an off-work status during the qualifying period; (4) Dr. B explained the specific reasons why claimant could not work at all and related it to the compensable injury; and (5) claimant is in "very bad shape" at the time of the qualifying period and his condition has worsened since Dr. G, his oncologist, stated in May 1999 that claimant could work.

The criteria for entitlement to SIBs are set forth in Sections 408.142(a) and 408.143. The law regarding SIBs, good faith, and an assertion that there was no ability to work at all during the qualifying periods is discussed in Texas Workers' Compensation Commission Appeal No. 000004, decided February 15, 2000. The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an employee may be in good faith 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[.]

The Appeals Panel's standard of review in this case is also set forth in Appeal No. 000004.

The hearing officer summarized the background facts in her decision and order. Briefly, claimant testified that in _____ he was injured when a heavy piece of equipment toppled over on him, pinning him beneath it. Claimant said he sustained a ruptured disc, cracked ribs, and crushed a vertebra. In October 1996 claimant was diagnosed with and subsequently treated for myeloma. Claimant's oncologist noted in October 1996 that claimant had mild back pain that had not worsened in "recent weeks." In 1999, Dr. C noted that claimant had a collapse or compression fracture at L2 that he attributed to claimant's compensable injury. Claimant had other compression fractures as well that Dr. C stated were not considered part of claimant's compensable injury, although

he noted that there might be some relation. Claimant was treated for increasing back pain beginning in late 1999 or early 2000. Dr. G related claimant's back pain to his myeloma. Dr. B said claimant was unable to work due to pain and weakness and related this to claimant's compensable injury. The parties stipulated that: (1) claimant sustained a compensable injury on _____; (2) claimant had an impairment rating of 29%; (3) claimant did not commute any of his impairment income benefits; and (4) the qualifying period for the first quarter was from November 19, 1999, through February 17, 2000.

The hearing officer determined that: (1) claimant had some ability to work during the first quarter qualifying period; (2) claimant's medical evidence did not explain why he had no ability to work; (3) claimant did not look for work and did not meet the good faith SIBs requirements; (4) claimant's medical records do not establish that he continued to suffer with chronic low back pain due to his compensable injury; and (5) claimant's unemployment was not a direct result of his impairment.

Claimant had the burden to prove that he had no ability to work. Texas Workers' Compensation Commission Appeal No. 950582, decided May 25, 1995. The hearing officer was the sole judge of the credibility of the evidence and she judged the credibility of the medical evidence regarding whether claimant had an ability to work during the first quarter qualifying period. The hearing officer specifically found that the medical evidence from Dr. G dated in May 1999, about seven months before the qualifying period started, showed that claimant had some ability to work. There was medical evidence from Dr. B that claimant could not work due to the compensable injury. However, the hearing officer judged the credibility of this evidence and decided what weight to give to this evidence. The hearing officer could consider all of the medical evidence in making her determinations. We affirm the hearing officer's good faith determination. We also affirm the direct result determination, which involved a fact question for the hearing officer. The hearing officer considered the reason for claimant's unemployment and resolved this fact issue against claimant. Because the hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we will not substitute our judgment for hers. 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:

Robert E. Lang
Appeals Panel
Manager/Judge

Gary L. Kilgore
Appeals Judge