

APPEAL NO. 002101

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 August 1, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the seventh quarter but that she is entitled to SIBs for the eighth quarter. Claimant appealed the denial of SIBs for the seventh quarter, contending that she had no ability to work during the qualifying period for the seventh quarter. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order. The parties did not appeal the determination regarding eighth quarter SIBs.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she is not entitled to seventh quarter SIBs. Claimant asserts that: (1) she was unable to return to work until after she had completed a work hardening program, which she completed on January 28, 2000; and (2) she acted in good faith due to her participation in work hardening. Claimant points out that she did obtain employment a few months after the seventh quarter qualifying period ended. Claimant's application for the job she obtained took place during the qualifying period for the eighth quarter.

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)(3) (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 hearing officer determined that claimant did not make a good faith effort to find employment commensurate with her ability to work during the qualifying period for the seventh quarter. Claimant had the burden to prove that she 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. He noted that claimant was released to sedentary work "after she completed work hardening." Claimant completed work hardening at the end of January, about two and one-half weeks before the seventh quarter qualifying period ended on February 18, 2000. Therefore, the evidence does not support claimant's contention that she had no ability to work during the entire

qualifying period. 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.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge