

APPEAL NO. 002189

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 21, 2000. The hearing officer determined that the appellant (claimant) is not entitled to 17th quarter supplemental income benefits (SIBs). Claimant appealed the hearing officer's determinations on sufficiency grounds. Respondent (carrier) responded urging affirmance. The direct result determination was not appealed in this case.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he is not entitled to SIBs for the 17th quarter. 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. 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: (1) has been unable to perform any type of work in any capacity; (2) has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work; and (3) no other records show that the injured employee is able to return to work.

The hearing officer summarized the facts in his decision. Briefly, claimant sustained a compensable right hand crush injury, underwent several surgeries, and now has very limited use of the right hand. The parties stipulated that carrier accepted liability for the _____, injury. There was evidence that the qualifying period for the quarter in question ran from February 24, 2000, through May 24, 2000.

The hearing officer determined that: (1) the June 5, 2000, narrative from Dr. K did not show that claimant was totally unable to work during the qualifying period; (2) the November 9, 1999, report from Dr. M shows that claimant had the ability to do sedentary work; (3) claimant did not seek employment each week of the qualifying period; and (4) claimant did not make a good faith effort to obtain employment commensurate with his ability to work.

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 believed that Dr. K's narrative was not sufficient under Rule 130.102(d)(4) and we conclude that this determination is not against the great weight and preponderance of the evidence. The hearing officer also determined that another record, Dr. M's November 9, 1999, report, showed that claimant had an ability to work. Accordingly, we conclude that the hearing officer did not err in determining that claimant did not meet his burden of proof regarding the good faith SIBs criterion. 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:

Robert E. Lang
Appeals Panel
Manager/Judge

Tommy W. Lueders
Appeals Judge