

## APPEAL NO. 002204

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 28, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter. Claimant appealed this determination on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision. The direct result determination has not been appealed.

### DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she is not entitled to SIBs for the fourth quarter. Claimant asserts that, although she was "on a sedentary work level, there was no return to work release from [her] treating physician" or the designated doctor. The law regarding SIBs, good faith, and an assertion that there was no ability to work at all during the qualifying period 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.

Claimant testified that she is currently capable of light work and said that her condition was the same or better during the beginning of the qualifying period. Although claimant's treating doctor, Dr. S, said claimant could not work, there was medical evidence dated in March 2000 that claimant was able to work. Claimant said that she did not begin a job search until March 29, 2000, due to financial problems. The filing period ran from February 9, 2000, to May 11, 2000. The hearing officer noted that claimant was able to do sedentary work and determined that she did not make a good faith effort to obtain employment commensurate with her ability to work.

Claimant asserts that she had not been given a work release. However, claimant indicated that she was capable of light work and there was medical evidence supporting her testimony. Because claimant did not then look for work every week of the qualifying period, the hearing officer did not err in determining that claimant did not meet her burden of proof regarding the good faith SIBs criterion. Rule 130.120(e). Claimant asserts that the hearing officer did not consider her depression in making his determinations. However, claimant was still required to look for work commensurate with her ability, which she indicated was a light-duty ability. Claimant also asserts that she was successful in her job search. However, claimant did not begin working until after the qualifying period ended. Therefore, Rule 130.102(d)(1) does not apply. 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.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge