APPEAL NO. 002300

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 September 20, 2000. The issue at the CCH was whether the appellant (claimant) was entitled to his first quarter of supplemental income benefits (SIBs).

The hearing officer held that while the claimant's unemployment was the direct result of his impairment, he failed to prove, consistent with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), that he had the total inability to work.

The claimant appeals and recites evidence that shows that he was not released to full duty and has considerable restrictions. The respondent (carrier) responds that the hearing officer has correctly applied the applicable administrative rules and weighed the facts.

DECISION

Affirmed.

The claimant was injured on October 29 and 31, 1996, when he first bumped his knee on a step when he slipped, and then fell backwards a few days later when that knee "locked up." The qualifying period for the SIBs period in issue ran from April 6 through July 5, 2000. It was stipulated the claimant had not looked for any work.

The claimant's treating doctor was Dr. G. The claimant had two surgeries on his cervical area as well as arthroscopic surgery on his knee. Although the claimant said that he has been told he might need a total knee replacement in the future, it was developed that there is no surgery under active consideration. The claimant said that additional surgery on his neck was not recommended. The claimant contended that he had gotten worse since his injury. He disputed that he could do any work, either because of the inability to drive due to medication, or his constant pain level even with medication. His work experience was largely in jobs that were not light duty, although he had once been a lab technician.

The claimant said that he had contacted the Texas Rehabilitation Commission (TRC) and was told that he would not qualify for any programs until he had a doctor's release. A June 3, 2000, letter from the TRC noted that the claimant did not request an interview, that he was not released to "any type" of light duty, and that he was looking at more surgeries. The claimant had not called the TRC to update them on his prospects for surgery.

The claimant said he could not walk, sit, or stand for more than 10 minutes at a stretch. However, he had driven 25 miles on the morning of the CCH and had not stopped. He had not taken his medication the morning of the CCH.

The claimant said that the doctor for the carrier, Dr. W, had only examined him for 15 minutes and had not discussed any return to work with him. Dr. W's March 7, 2000, report recommended that the claimant could return to light-duty work on a full-time basis, with no lifting over 20 pounds, no overhead work, no climbing, and no repeated bending, stooping, crawling, or kneeling. He also recommended against prolonged walking or standing. Dr. W opined that these were permanent restrictions.

Dr. G wrote on June 14, 2000, that the claimant could not attain "meaningful" employment as he was left with restrictions on his ability to engage in prolonged standing, sitting, or walking, and could not climb, stoop, kneel, or crawl. Dr. G also said that the claimant could do "no" lifting. Dr. G wrote that on August 9, 2000, the claimant could not even return to light duty due to his multiple surgeries and significantly restricted ability to stand and sit (not more than 15 to 20 minutes at a time). He opined that the claimant was permanently disabled.

It is important to emphasize that the 1989 Act does not require an ability to return to full, unrestricted duty. Rather, the SIBs statutes provide that a search for employment "commensurate with the ability to work" must be sought as a requirement for seeking SIBs. This may well mean part-time, restricted work.

The Texas Workers' Compensation Commission (Commission) has allowed, in certain limited circumstances, for inability to perform work to be considered as meeting the good faith requirement. According to the applicable administrative rule, Rule 130.102(d)(4), a good faith effort may be found if the employee:

> (4) 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[.]

It is clear that the Commission intended that medical evidence in support of an inability to work be beyond a mere pronouncement of inability.

We have reviewed the evidence and the hearing officer's decision is supported by sufficient evidence, most notably the finding that there is another medical record showing an ability to work. She could also find Dr. G's report wanting in the respect of explaining why NO work could be done at all. Not every available job is one that requires no medical restrictions. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this is the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Kenneth A. Huchton
Appeals Judge