APPEAL NO. 002384

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 September 18, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th quarter and that the respondent (carrier) is not entitled to suspend claimant's SIBs to recoup the previous overpayment of $1,289.31. Claimant appealed the SIBs determination on sufficiency grounds. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order. The determinations regarding direct result and recoupment were not appealed.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he is not entitled to SIBs for the 11th quarter. Claimant asserts that the overwhelming evidence shows that he made a good faith job search even though he had no ability to work. The applicable law and our standard of review are set forth in Texas Workers' Compensation Commission Appeal No. 000810, decided June 1, 2000; Texas Workers' Compensation Commission Appeal No. 000004, decided February 15, 2000; Sections 408.142(a) and 408.143; and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102).

Claimant first asserts that he had no ability to work during the qualifying period. 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 determined that claimant did not provide a narrative that specifically explained why claimant was totally unable to work during the qualifying period. Claimant testified that he sustained an injury to his low back, hip and knee in a fall at work, and that he underwent lumbar surgery in 1998. Claimant's treating doctor, Dr. L, testified at the hearing and said that claimant could not do even sedentary work during the 11th quarter qualifying period, which was from February 12, 2000, to May 13, 2000. However, when asked what kind of work he thought he could do, claimant indicated he thought he could do sedentary work if he could change positions and walk, "limber up," and sit when needed. Claimant also indicated that he had been doing volunteer work at a soup kitchen during the qualifying period and that he had hoped it would turn into a paying position. In a May 1999 letter, Dr. B said a functional capacity evaluation indicates that claimant is capable of modified sedentary activity. In a July 1999 report, Dr. S, indicated that claimant could do light or sedentary work with restrictions on sitting and standing. Claimant's treating doctor said he referred claimant to Dr. S.

The record does not contain a written narrative that states that claimant was unable to work and explains why he had no ability to work. Dr. L testified in this regard at the hearing; however, there was no written narrative offered to "specifically explain how the injury causes a total inability to work," as required by Rule 130.102(d)(4). Additionally, we note that there was evidence from other doctors that claimant had some ability to work, which the hearing officer could have considered in her application of Rule 130.102(d)(4). We have reviewed the medical evidence in this case and we conclude that the determination that claimant had some ability to work is 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 now address claimant's contention that he made a good faith job search. Claimant testified that he looked for jobs in the newspaper, that he was sent to a job vendor by the Texas Rehabilitation Commission, that a community jobs project helped him to look for work, and that he also sought work through his church. Claimant did not explain or document the days that he looked for work in the newspaper. Claimant documented 29 job search contacts on his Application for [SIBs] (TWCC-52) and said he made the job contacts listed in person, except for one which was by telephone. Claimant did not document a job search after May 4, 2000; the qualifying period ended May 13, 2000. It appears that claimant filed his TWCC-52 on May 8, 2000, the day that he signed it.

The hearing officer determined that claimant did not meet his burden to prove he made a good faith effort to look for work commensurate with his ability to work. The hearing officer stated that: (1) claimant did not conduct and document a weekly good faith job search effort during the qualifying period; and (2) claimant did not "conduct a well-structured job search plan [sic]." The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). After reviewing the record, we conclude that 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, *supra*.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge