

APPEAL NO. 002534

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 October 3, 2000. The hearing officer determined that the appellant (claimant) was not entitled to the 7th quarter of supplemental income benefits (SIBs). The claimant appealed, asserting that the great weight of the evidence proved that she had no ability to work during the qualifying period for the 7th quarter of SIBs and, therefore, she made a good faith effort to seek employment commensurate with her ability to work. The respondent (self-insured) asserts that the hearing officer's decision is supported by the evidence and requests that it be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____, when the car she was driving was struck from behind. It is noted that the claimant had sustained a prior injury to her cervical spine which had required surgery, but the cervical injury is not a part of the compensable injury of _____. The parties stipulated that the claimant reached maximum medical improvement on March 11, 1997, with a 30% impairment rating. The claimant did not commute any portion of her impairment income benefits. She asserts that she is entitled to SIBs for the 7th quarter, from June 1, 2000, through August 31, 2000. The parties agreed that the qualifying period for the 7th quarter was from February 18, 2000, through May 18, 2000.

The hearing officer found that the claimant's unemployment during the qualifying period was a direct result of her impairment and that finding has not been appealed. The only remaining requisite for entitlement to SIBs is a determination of whether the claimant made a good faith effort to seek employment commensurate with her ability to work. On that prong, the hearing officer found against the claimant, finding that the claimant had the ability to perform sedentary work but did not seek any employment, and had not, therefore, made a good faith effort to seek employment commensurate with her ability to work. The claimant appeals, contending on appeal as she did at the hearing that she had no ability to work during the qualifying period.

In what is commonly referred to as a "no ability" SIBs case under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 103.102(d)(4) (Rule 130.102(d)(4)), which became effective on November 28, 1999, good faith is defined to include instances where a claimant had been unable to perform any type of work in any capacity, has provided a narrative report from a doctor showing how the compensable injury results in a total inability to work, and no other records show an ability to return to work.

The evidence regarding the claimant's ability, or lack thereof, to engage in any type of employment was in conflict. In many instances, the existence of a record showing an ability to return to work and the failure of a narrative report from a doctor to explain how the compensable injury causes a total inability to work will translate into a finding by the trier of fact that the claimant has some ability to work. Such appears to be the case here.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The hearing officer's finding that the claimant had the ability to engage in sedentary work during the qualifying period at issue is supported by the evidence presented and we do not find that her determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge