APPEAL NO. 002553

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 5, 2000. The issue at the CCH was whether the respondent (claimant) was entitled to supplemental income benefits (SIBs) for her sixth quarter of eligibility. The hearing officer determined that the claimant proved a total inability to work during the filing period under review, and was entitled to SIBs.

The appellant (carrier) appeals, arguing that another medical record showed that the claimant had the ability to work. There is no response from the claimant.

DECISION

We affirm.

The claimant sustained a mental trauma injury when she was physically assaulted by a customer while she was a check-out clerk for (employer). The customer grabbed her from behind and touched her inappropriately, not once, but several times. The claimant felt that the management of the store was not supportive. Apparently, she was briefly seen and released at a hospital emergency room that night. The fact of the _____, injury was stipulated, as was her impairment rating of 60%. The period under review was January 13 to April 13, 2000.

The claimant's treating doctor, Dr. D, wrote a report on June 6, 2000, which detailed the reasons why he believed that the claimant's post-traumatic stress disorder (PTSD) and brief reactive psychosis create an inability to perform any work. He also noted that the claimant had been attacked and raped about 15 years before her injury.

The claimant was interviewed by a psychiatrist, Dr. S, on December 20, 1999. Dr. S's basic premise was that both the earlier rape and current injury were fictional. She documented many aspects of antisocial and hostile behavior on the claimant's part that she observed, much in response to unexpected payment for valet parking. Dr. S noted that all aspects of the claimant's psychosis were self-reported. She diagnosed factitious disorder and paranoid personality disorder. She said that the secondary gain of workers' compensation caused the claimant to maintain her illness. Dr. S expressed doubt about the diagnosis of PTSD.

Although years before the period under review, the report of Dr. C, the designated doctor, who was also a psychiatrist, documented the claimant's psychological injury, attributed it to the event at the employer, and expressed that the claimant's prognosis and employability were poor. There was no evidence that the scope or extent of the injury was under dispute.

The claimant, who was 41, was articulate but very emotional at the CCH as she described the attack leading to injury. She had not sought any employment during the period of time under review. The claimant drove herself to the CCH. She said that Dr. D had not talked with her about returning to work (although the end of entitlement for any income benefits is 401 weeks after the date of injury). The carrier had paid for her fifth quarter of SIBs. She was working to reach some independence in her activities of daily living, with mixed results. The claimant said that the Texas Rehabilitation Commission (TRC) told her that she was not ready for retraining.

The claimant described her anger over the unexpected opening of her car door by a valet parking attendant when she went to see Dr. S. She said that the adjuster was present during her examination by Dr. S and discussed the case in front of her.

The purpose of SIBs is to provide a benefit for the transition back to employment, and, to this end, a good faith search for employment commensurate with the ability to work is required. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) defines good faith as follows:

> Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
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> (1) has returned to work in a position which is relatively equal to the injured employee's ability to work;
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> (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the TRC during the qualifying period;
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> (3) has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;
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> (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; or
>
> (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

It is within the fact finder's responsibility to determine whether the requirements of Rule 103.102(d) have been met where an injured worker contends that there is no ability to work in any capacity. The hearing officer is not bound to accept a medical record that merely states, rather than shows, an ability to work. In this case, he could assign no weight to Dr. S's report, as it was premised on a disbelief that the stipulated, and undisputed, injury occurred. He could consider that the information that Dr. S described about how the claimant acted in her office supported, rather than refuted, the medical evidence from Dr. D and Dr. C. Dr. D's report describes in some detail why he believes the claimant's ability to function is caused by her illness. The hearing officer could also weigh the presence of the adjuster during the psychiatric examination by Dr. S as bearing on the substance of that opinion.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). While we note that the decision here is no guarantee of continued eligibility, the decision of this hearing officer, on this record, is sufficiently supported by the record. We accordingly affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Tommy W. Lueders
Appeals Judge