APPEAL NO. 002593

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 October 17, 2000. The issues at the CCH were whether the claimant was entitled to supplemental income benefits (SIBs) for the 17th and 18th quarters. The hearing officer found that the claimant had ability to work during those quarters but failed to make a good faith search for employment commensurate with his ability to work.

The appellant (claimant) has appealed, arguing that his doctor has ordered him not to work and that he therefore is not required to search for work. The self-insured (carrier) has not responded.

DECISION

We affirm the hearing officer's decision.

The claimant was 66 years old at the time of the CCH. He had injured his back on _____. The claimant said his treating doctor, Dr. S, had affirmatively advised him not to work because he could run the risk of being in a wheelchair and he had never been released to any type of work. Letters from Dr. S state that the claimant cannot do any work; however, a letter dated March 2, 2000, from Dr. S also states that the claimant's abilities, as reflected on a functional capacity evaluation from July 1999, would place the claimant in a sedentary work capacity. The claimant presented evidence that he sought employment from a small number of employers for a brief period in the qualifying period for the 17th quarter.

The Legislature has required that an injured worker who seeks SIBs must make a good faith search for employment commensurate with his/her ability to work. Section 408.143(a)(3). 28 TEX. ADMIN. CODE §130.102(d)(4) (Rule 130.102(d)(4)) states that an injured employee has made a good faith effort to obtain employment 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[.]

We have reviewed the evidence and do not agree that the decision of the hearing officer is against the great weight and preponderance of the evidence. We would emphasize that the requirement to seek employment commensurate with the ability to work will not mean, in every case, that full time work must be sought.

We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge