APPEAL NO. 002605

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 23, 2000. The CCH concerned the entitlement of the appellant (claimant) to supplemental income benefits (SIBs) for his 7th quarter of eligibility.

The hearing officer made findings that the claimant had not provided a narrative report from his treating doctor that explained in detail why his impairment precluded him from performing any work and that there were other records that showed that he had some ability to work. She further found that the claimant did not cooperate with a vocational counselor provided by the respondent (self-insured). Therefore, the claimant was not entitled to SIBs because he did not make a good faith search for employment commensurate with his ability to work.

The claimant has appealed, and argues that all of his evidence was not tendered into evidence by the ombudsman. He argues various facts that he believes demonstrate that he cannot work. The self-insured responds at length by reciting evidence that it believes supports the hearing officer's findings.

DECISION

We affirm the hearing officer's decision.

We can consider only evidence tendered at the CCH, and cannot consider additional evidence that is attached to the appeal. The qualifying period under consideration ran from February 20 through May 20, 2000. The claimant had a back injury for which he had undergone spinal surgeries. He had not sought work during the qualifying period. His personal belief that he was not ready to work was evident. Brief letters written during the qualifying period from the claimant’s treating doctor, Dr. D, were admitted that constitute declarations that the claimant was not capable of working due to his injuries. These letters do not explain how the claimant’s impairment precludes the ability to perform any work.

A report from a doctor for the carrier, Dr. T, was written in April 2000 and noted that while the claimant had restrictions on his activity, he could return to some type of work. The claimant said he did most of the chores in his house. The claimant agreed he had begun to refuse mail from a job search consultant that contained appointments for various job interviews because he was not yet ready to return to work.

We note that there was only one instance where the claimant thought there was a doctor's report in his evidence that was apparently not there. However, no evidence he offered was excluded nor did the claimant argue that any evidence he wished to have considered was not brought forward to the CCH through the ombudsman.

The legislature has required, as a condition of receiving SIBs, that the injured worker undergo a good faith search for employment commensurate with his ability to work. This will not mean in all cases that a worker must seek work only on a full-time basis. In certain exceptional circumstances, the Texas Workers' Compensation Commission has provided that the inability to perform any work may preclude the need to search for employment.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) 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:
>
> (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 record and cannot agree that the hearing officer's application of the rule to the evidence is against the great weight and preponderance of the evidence, and, accordingly, we affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge