APPEAL NO. 002677

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 19, 2000. The issues at the CCH were whether the appellant (claimant) was entitled to supplemental income benefits (SIBs) for her second through seventh quarters of eligibility, and whether the respondent (carrier) waived the right to dispute entitlement for the third through seventh quarters. The hearing officer found no waiver on the carrier's part, and then found that the claimant failed to make a good faith search for employment commensurate with her ability to work during the qualifying periods for the quarters in issue and was not entitled to SIBs.

The claimant appeals. arguing both that the hearing officer made statements not in her best interest and that her medical records will show that she had no ability to work. There is no response from the carrier.

DECISION

We affirm the hearing officer's decision.

Our review of the record is limited to the evidence presented at the CCH and we will not consider matters raised for the first time on appeal. The claimant sustained a back injury on _____, while working as a secretary/clerk for (employer). As she described that job, it was apparent that it involved more than sedentary work. The claimant had back surgery on August 18, 1998, and thus her application for her first quarter of SIBs was not disputed by the carrier.

We initially observe that while collegiality between hearing officer and attorneys is probably best kept to a minimum, because it may be misinterpreted, the comments made by the hearing officer at the beginning of the CCH do not translate to bias on the part of the hearing officer. Ultimately, the case had to be decided on the evidence presented in light of the applicable rules of the Texas Workers' Compensation Commission (Commission) that applied to most of the quarters under review.

The legislature has required that injured workers who apply for SIBs are required to search for employment commensurate with their ability to work. Section 408.143(a)(3). This does not mean that in every case full-time work, or only work equivalent to that done at the time of injury, should be sought. The qualifying periods for the quarters in issue ran from December 23, 1998, through June 7, 2000. During most of the periods of time under review (specifically the third through seventh quarters) the rules of the Commission, specifically Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)), required that a worker's claim of an inability to work had to be accompanied with a narrative from a doctor that specifically explained how the injury caused a <u>total</u> inability to work and that there be no other records showing an ability to work. Prior to January 31, 1999,

whether a worker had the complete inability to work, such that a search for employment need not be made, was a matter for the fact finder.

The claimant in the present case sought no employment and maintained that she felt there was nothing she could do "in the area" where she lived. The hearing officer has detailed the medical evidence in the record which asserts a general inability to work, which is then countered by evidence from a functional capacity evaluation that the claimant has an ability to work. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We, accordingly, affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Thomas A. Knapp
Appeals Judge