

APPEAL NO. 002731

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 26, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 14th quarter. Claimant appealed this determination on sufficiency grounds, contending that he made a good faith effort to seek employment. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order. The direct result determination in claimant's favor was not appealed.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he is not entitled to SIBs for the 14th quarter. Claimant asserts that: (1) he was registered to sell at the flea market in March 2000; (2) he made three contacts with the Texas Workforce Commission during the qualifying period; (3) before June 22, 2000, he had dedicated himself to his flea market/repair business; (4) he has worked with a lot of pain in his knee; and (5) he told the Texas Rehabilitation Commission personnel that he could do mechanic supervisor work.

The applicable law and our standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 001881, decided September 26, 2000; and Texas Workers' Compensation Commission Appeal No. 001635, decided August 25, 2000. See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)). The hearing officer discussed the evidence in her decision and order. The qualifying period in this case was from April 23, 2000, through July 22, 2000. Claimant's compensable injury was to his knee and there was evidence that he had declined to have knee replacement surgery. Claimant testified that from the beginning of the qualifying period until June 22, 2000, he worked all day during the week collecting items to repair and sell at the flea market, and worked on the weekends doing the sales. The hearing officer determined that claimant began a weekly job search on June 22, 2000, and this is documented in claimant's Application for [SIBS] (TWCC-52). In a December 1999 report, claimant's doctor stated that he had "limited work" options and that he can tolerate "minimal activities." He did not indicate what number of hours claimant could work. The parties stipulated that claimant could do "sedentary" work, and did not state that he is limited to part-time work.

The hearing officer indicated that claimant did not do what was "required of him" and apparently determined that claimant's activities regarding his flea market business were not relatively equal to his ability to work. The hearing officer determined that claimant's work activity was not sufficient to amount to good faith. She also noted that he did not make a good faith weekly job search. We have reviewed the record and we conclude that the hearing officer's determination that claimant is not entitled to SIBs is not

so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Philip F. O'Neill
Appeals Judge