APPEAL NO. 002853

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 November 6, 2000. With respect to the issues before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th and 14th quarters. In its appeal, the appellant (carrier) contends that the hearing officer erred "as a matter of law" in making the determination that the claimant is entitled to SIBs for those quarters because she did not satisfy the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) to establish that she had no ability to work in the relevant qualifying periods. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to SIBs for the 13th and 14th quarters. The carrier contends that the hearing officer erred as a matter of law in determining that the claimant is entitled to SIBs in the 13th and 14th quarters because she did not satisfy the requirements to prove a total inability to work under Rule 130.102(d)(4). Rule 130.102(d)(4) provides that an injured employee had made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "has been unable to perform any 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." The carrier argues that the claimant did not present a sufficient narrative and that other records show an ability to work. The medical records from Dr. E, the claimant's treating doctor, provide sufficient evidentiary support for the hearing officer's determination that the claimant satisfied the narrative requirement. In addition, we find no merit in the assertion that the hearing officer erred in determining that the records from Dr. P are not other records that show an ability to work. The hearing officer was acting within his province as the fact finder under Section 410.165(a) in discounting Dr. P's reports as other records showing an ability to work because they did not consider the claimant's depression and anxiety, which have been accepted as part of the compensable injury. Nothing in our review of the record demonstrates that the hearing officer's determinations that the claimant had no ability to work in the qualifying periods for the 13th and 14th quarters and that she is entitled to SIBs for those quarters are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the challenged determinations on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge