APPEAL NO. 010042

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 4, 2000, a hearing was held. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter from September 14 through December 13, 2000. The claimant appealed. No response was received from the carrier.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that during the qualifying period for the fifth quarter (June 2 through August 31, 2000) the claimant had some ability to work and that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter. Rule 130.102(d)(4) provides that an injured employee has 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 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. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for work every week of the qualifying period and document his or her job search efforts.

The claimant sustained a compensable injury on _____. The claimant testified that he injured his knees and right wrist when he fell on ice at work that day. It is undisputed that the claimant did not work nor look for work during the qualifying period. Dr. O, who is treating the claimant for his work-related injury, reported during the qualifying period that the claimant has complex regional pain syndrome of the right upper extremity that has spread to the left upper extremity and that the claimant is unable to work secondary to the pain he is having from that syndrome. Dr. C, a referral doctor, agreed with Dr. O's assessment and wrote, during the qualifying period, that the claimant is incapable of any work. With regard to whether any records show that the claimant is able to return to work, the claimant underwent a functional capacity evaluation in August 1999 and based on that evaluation Dr. M wrote that the claimant is limited to sedentary-type work. Dr. M wrote in May 2000 that he had reviewed a videotape of the claimant dated April 11, 2000, and that the videotape supported his findings that the claimant is able to work at a sedentary capacity with no lifting from floor level. The hearing officer wrote in her

decision that Dr. M had documented that the claimant can perform sedentary work. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Philip F. O'Neill
Appeals Judge