APPEAL NO. 010533

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 originally held on September 5, 2000. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 002295, decided November 15, 2000, remanded the case to the hearing officer for clarification of the designated doctor's impairment rating (IR) and a determination on the first quarter of supplemental income benefits (SIBs), if necessary. No further hearing was necessary and none was held.

The hearing officer determined that the appellant's (claimant) IR was 18%, in accordance with the report of the designated doctor, and this was not appealed. The hearing officer also determined that the claimant was not entitled to SIBs for his first quarter and that he had not produced the required narrative from his doctor stating that he was unable to perform any type of work in any capacity and how his injury caused such total inability. The claimant has appealed this and argues that there is no release or other medical evidence showing that he can work. There is no response from the respondent (carrier).

DECISION

We affirm the hearing officer's decision.

It is important to note that the legislature, not the Texas Workers' Compensation Commission (Commission), has imposed the requirement that a good faith search for employment be made commensurate with the ability to work, in order to qualify for SIBs. It is the burden of the claimant to show that this requirement was satisfied.

The Commission has promulgated Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) which states many factors that will meet this requirement. Rule 130.102(d)(4) states that a good faith effort will have been made 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[.]

The lack of a release to work does not satisfy this requirement. A simple "off work" letter may be ambiguous in that the doctor/author may intend it to stand as evidence that the employee cannot return to his former job (with no analysis of whether the employee can return to <u>any</u> job). The required narrative should resolve such ambiguity.

The hearing officer's conclusion from the record that the medical records in evidence do not meet this requirement and that the claimant did not demonstrate a total inability to work is not so against the great weight and preponderance of the evidence as

to be manifestly unfair or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We accordingly affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge