

APPEAL NO. 010798

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 010107, decided February 16, 2001, for reconstruction of the record and arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing, which was held on December 19, 2000. The hearing officer reissued her decision. With respect to the issues before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth and sixth quarters. In his appeal, the claimant contends that the hearing officer's determinations that he had some ability to work in the qualifying period for the fifth and sixth quarters, that he did not make a good faith effort to look for work in those periods commensurate with his ability to work, and that he is not entitled to SIBs are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on August 2, 1998, with an impairment rating of 20%; that he did not commute his impairment income benefits; that the fifth quarter of SIBs ran from September 25 to December 24, 2000; that the sixth quarter of SIBs ran from December 25, 2000, to March 25, 2001; and that the claimant earned no wages and did not seek employment in the qualifying periods for the fifth and sixth quarters of SIBs. The qualifying period for the fifth quarter was identified as the period from June 13 to September 11, 2000, and the qualifying period for the sixth period was identified as running from September 12 to December 11, 2000.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the fifth and sixth quarters. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (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." The hearing officer determined that the claimant failed to provide a narrative report from a doctor that explained how his injury caused a total inability to work and that another record, namely the February 14, 2000, functional capacity evaluation, shows that the claimant is able to work at the sedentary to light level. The hearing officer was acting within her province as the fact finder under Section 410.165(a) in making those determinations. Nothing in our review of the record demonstrates that the determination that the claimant had some ability to work is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, we will not disturb that determination 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 claimant stipulated that he did not look for work during the relevant qualifying periods; thus, the hearing officer properly determined that the claimant had not satisfied the good faith requirement and that he is not entitled to SIBs for the fifth and sixth quarters.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge