

APPEAL NO. 011098
FILED JUNE 27, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on April 27, 2001. The hearing officer resolved the disputed issues by finding that during the qualifying periods for the first, second, and third supplemental income benefits (SIBs) quarters, the appellant (claimant) had some ability to work but did not return to work nor seek employment of any kind and that her unemployment was not a direct result of her impairment from the compensable injury. Based on these findings, the hearing officer concluded that the claimant is not entitled to SIBs for the first, second, and third quarters. The claimant has appealed, asserting that no doctor had released her to return to work and that she had no ability to work. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the quarters at issue. The claimant testified that she injured her head, neck, shoulders, back, and a knee in her slip-and-fall accident at work on _____; that she underwent cervical spine surgery (in 1998) and has been approved for lumbar spine surgery; that she has not worked since the accident and draws Social Security disability benefits; that no doctor has released her to return to work and she cannot work because of her pain and weakness; and that during the qualifying periods, extending from March 3, 2000, to November 30, 2000, she did not look for any type of employment. According to the November 29, 2000, report of Dr. K, the claimant demonstrated during a functional capacity evaluation (FCE) that she has the ability to perform light work. The FCE report also stated that throughout the examination the claimant put forth submaximal effort, demonstrated inconsistencies, and had frequent emotional outbursts stating she was tired of the pain. Reports from the claimant's doctor, Dr. E, during the period from March 20, 2000, to February 9, 2001, stated that the claimant has significant cervical and lumbar spine disease; that she is unable to work; that she is advised not to return to work; and that she cannot sit or stand for prolonged periods nor walk for long distances.

The requirements for entitlement to SIBs are set forth in Sections 408.142 and 408.143 and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). 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.

Whether during the qualifying periods the claimant made a good faith attempt to obtain employment commensurate with her ability to work and whether her unemployment was a direct result of the impairment from her compensable injury were questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge