APPEAL NO. 011353
FILED JULY 24, 2001

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 May 29, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 21st quarter.

The claimant appealed, contending that surgery to his low back and right knee prevents his return to work and that his doctors say he is unable to work. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

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). Rule 130.102(b) provides that an injured employee who has an impairment rating of 15% or greater and who has not commuted any impairment income benefits is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. The hearing officer's finding that the claimant's unemployment during the applicable quarter was a direct result of the impairment from the compensable injury has not been appealed and will not be discussed further.

The parties stipulated to the various jurisdictional elements. Although not stipulated, the parties appear to agree that the qualifying period for the 21st quarter was from August 28, 2000, through November 27, 2000. At issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work. The claimant proceeds on a total inability to work theory. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with his ability to work if: (1) the employee has been unable to perform any type of work in any capacity; (2) the employee has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work; and (3) no other records show that the injured employee is able to return to work.

The claimant is 71 years old, does not drive, and has a limited education in Mexico. The claimant submits three medical reports, one of which releases the claimant to "limited work" on March 30, 1999. A September 14, 2000, report from Dr. P, the claimant's treating doctor, comments on an April 2000 functional capacity evaluation (FCE), stating:

> In my opinion as mentioned before, this 71 year old gentleman, whose residual low back complaints and knee complaints remains unable to engage

> in any labor occupations and he is definitely restricted of any lifting, pulling, or pushing heavy objects above 20 pounds. He also needs to frequently change his position between sitting, standing, and walking. Unfortunately, his education level as well as the inability to fluently speak English, and as well as his age with physical problems, are a major obstacle to place this man in any light duty activities in the current market.

The hearing officer found that the claimant "failed to provide a detailed narrative report from a doctor which specifically explained how the injury caused a total inability to work." We hold that determination to be supported by the evidence.

The carrier, in addition to FCEs of April 2000 and April 2001, offered the report of a designated doctor, who, in a report of March 5, 2001, concluded:

> The patient clearly could work at a sedentary position as long as he could change positions every 40 to 60 minutes.
>
> Although the patient is functionally capable of returning to work, the past records have related that he has very little skills with respect to finding gainful employment. He does not drive and uses public transportation instead. He does not have a mastery of the English language. However, his lack of skills does not necessarily preclude him from finding employment with the limitations as noted on the April 13, 2000, [FCE].

The hearing officer concluded that the "medical evidence" (the FCEs and the designated doctor's report) showed that the claimant "had some ability to work in the sedentary to light physical demand level." We hold that conclusion supported by the evidence.

The Appeals Panel 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge