APPEAL NO. 011362
FILED JULY 30, 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 in two sessions, on April 17, 2001, and May 22, 2001. With respect to the issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter. In his appeal, the claimant essentially argues that the hearing officer's determination is against the great weight of the evidence. The claimant also asserts error in the hearing officer's admission of one of the respondent's (carrier) exhibits. Finally, the claimant contends that the hearing officer is "biased and distasteful." In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, that he was assigned a 28% impairment rating for his compensable injury; and that the qualifying period for the third quarter was from November 26, 2000, to February 24, 2001. 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 in this case is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying period.

Rule 130.102(e) provides that an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. 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.

In the instant case, the hearing officer determined that the claimant did not satisfy the good faith requirement either by establishing that he had no ability to work or by conducting a good faith job search. The hearing officer determined that the claimant did not provide a narrative from a doctor which specifically explains how his compensable injury causes a total inability to work and that there are other records that show the claimant had some ability to work during the time period in question. Those determinations are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Likewise, the hearing officer was not persuaded that the claimant's job search efforts were conducted in good faith in an attempt to return to work. Rather, he determined that the claimant was "going through the motions." Our review of the record also does not

reveal that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse the challenged determinations, or the determination that the claimant is not entitled to SIBs for the third quarter, 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).

In his appeal, the claimant asserts error in the hearing officer's admission and consideration of a videotape offered by the carrier, arguing that it was not timely exchanged. The claimant did not raise that objection at the hearing; rather, he raised a relevance objection to that exhibit because it was filmed outside of the qualifying period. By failing to raise an objection based on failure to timely exchange, the claimant has not preserved error for purposes of appeal. However, we note, in addition, that it does not appear that any error in the admission of this exhibit would rise to the level of reversible error in that its admission was not reasonably calculated to cause and probably did not cause the rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

Finally, we briefly address the claimant's assertion that the hearing officer was biased against him. After carefully reviewing the record, we cannot agree that the hearing officer's decision in this instance was the product of bias or prejudice. Rather, we believe that his determinations were the result of his resolving the conflicts and inconsistencies in the evidence and assessing credibility. We perceive no error.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge