APPEAL NO. 011453
FILED JULY 31, 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 23, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for her fourth and fifth quarters of eligibility because she had not made a good faith search for employment commensurate with her ability to work.

The claimant has appealed, arguing that no doctor has ever told her she could work. She argues that she did not realize that a search for employment was a "game she was supposed to play." The respondent (carrier) seeks affirmance of the decision.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that the claimant was not entitled to SIBs. The Legislature has required that a claimant who applies for SIBs must make a good faith search for employment commensurate with the ability to work. Section 408.143. This need not mean only full-time employment in all cases.

By rule, the Texas Workers' Compensation Commission has provided for criteria to assess a good faith job search, including standards for evaluating whether there is a total inability to work. This is set out in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)), which provides, as pertinent to this case:

> Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work 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 hearing officer, in the decision, discussed why the records produced from the treating doctor did not constitute a detailed narrative. The claimant even testified that her doctor indicated she could have worked two hours a day, as a letter from him in evidence states, but she equated this to an inability to work. The facts that jobs may be few given a person's limitations does not mean that they must not be sought.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this is the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge