APPEAL NO. 011505
FILED AUGUST 1, 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 June 15, 2001. With respect to the issues before him the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 8th compensable quarter. The claimant appeals, contending essentially that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The hearing officer's determination that the claimant's unemployment was a direct result of the impairment from the compensable injury has not been appealed and has become final.

At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with his ability to work. The claimant contends that he has not been able to work since the date of his injury. The standard of what constitutes a good faith effort to obtain employment in cases of a total inability to work was specifically defined and addressed, after January 31, 1999, in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)). Rule 130.102(d)(4) provides that the statutory good faith requirement may be met 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 determined that there was no narrative report from a doctor which specifically explained how the injury caused the claimant a total inability to work. In regard to the narrative report, Texas Workers' Compensation Commission Appeal No. 000835, decided June 5, 2000, and Texas Workers' Compensation Commission Appeal No. 002192, decided October 27, 2000, held that the narrative report from the doctor must specifically explain how the compensable injury causes a total inability to work. In Texas Workers' Compensation Appeal No. 002724, decided January 5, 2001, the concurring opinion propounded by Appeals Panel Manager Robert E. Lang to determine what constitutes a narrative, we stated:

> [t]o determine if the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) for a doctor's narrative report are met, the following will be considered:
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> - amendments;
> - supplements, including contested case hearing testimony from the doctor;
> - information incorporated in the report by reference; or
> - information from a doctor's medical records in evidence that can be reasonably incorporated in the doctor's narrative report by inference based on some connection between the report and the information in the medical records.

While there are various reports from physicians, none of which are within the qualifying period, the reports do not state specifically how the compensable injury prevents the claimant from working. Nor are there any amendments, supplements, or incorporated references, which specifically explain how the compensable injury, as opposed to the claimant's unrelated health problems, causes a total inability to work.

The hearing officer also noted that there were other records showing that the claimant did have the ability to work. Although the claimant testified to what he could or could not do, the evidence is conflicting. Prior to the qualifying period, there was a functional capacity evaluation (FCE) performed on the claimant in January 1998 which indicated the claimant could perform sedentary work. There was also a report from Dr. L which noted that in his review of the medical records of the claimant he reviewed a full-duty release for claimant dated January 14, 1998, from the medical case manager. The claimant contends that the FCE and Dr. L's report were before the qualifying period and should not be considered. There is no condition in Rule 130.102(d)(4) which necessarily limits the "other records" as to time of inception or as to when an examination is conducted.

The claimant also contends that because he was paid SIBs for the 7th quarter and now is being paid for the 9th quarter, he is entitled to SIBs for the 8th quarter. Whether the claimant was entitled to be paid for those quarters is not an issue before us and those quarters have little relevance to our determination of entitlement for the 8th quarter.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In this case, the claimant presented evidence tending to demonstrate that he has no ability to work and the carrier presented evidence tending to demonstrate that the claimant has some ability to work. The hearing officer had to judge the credibility of the evidence before him in order to determine whether the evidence

presented was sufficient to meet the criteria of Rule 130.102(d)(4). The question of whether another record shows an ability to work is a factual question, just as the questions of whether the claimant is unable to work and whether a narrative report specifically explains how the injury caused a total inability to work are factual questions. *See* Texas Workers' Compensation Commission Appeal No. 000177, decided March 16, 2000.

The hearing officer's determinations, that there was not a sufficient medical narrative from a doctor which specifically explained how the compensable injury prevented the claimant from working and that there were records showing the claimant did have an ability to work, are supported by the evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support this determination.

Accordingly, the hearing officer's decision and order are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge