APPEAL NO. 011554
FILED AUGUST 7, 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 31, 2001. She determined that the appellant (claimant) was not entitled to his fifth quarter of supplemental income benefits (SIBs). (The parties had agreed to entitlement for the sixth quarter.) The claimant appeals, arguing that he could not seek work until he received the results of a functional capacity evaluation (FCE). The respondent (carrier) responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that the claimant had not made a good faith search for employment in every week of the qualifying period, which ran from August 20 through November 18, 2000. The claimant testified that he did not search for work during the first two weeks of the qualifying period because he was unable to work, and because he did not realize that the law required him to search for work. He did not testify that he was waiting for the results of his FCE, and, in fact, stated that he disagreed with those results.

The 1989 Act has, since its effective date, required a job search commensurate with the ability to work in order to qualify for SIBs. It is the exception to this requirement that must be proven. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) lists the actions that constitute a good faith requirement to search for employment; inability to work in any capacity must be proven through a narrative from the doctor stating why the impairment precludes any ability to work. Rule 130.102(d)(4). A claimant, therefore, need not decline to seek work until he is affirmatively told he can work, but should seek work until he is affirmatively told that he cannot search for work. A search must be documented for every week of the qualifying period. Rule 130.102(e). The FCE in question was done June 8, 2000, and there would appear to be no reason why the claimant could not have obtained the results thereof simply by calling the evaluator. The fact that he waited to receive a paper copy from the carrier nearly three months later did not absolve him of the requirement to seek employment.

The hearing officer has properly applied the rule to the facts. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). 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:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge