APPEAL NO. 011644
FILED SEPTEMBER 5, 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 25, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for his third, fourth, and fifth quarters of eligibility because he had not made a good faith search for employment commensurate with his ability to work.

The claimant has appealed, arguing that he has medical evidence showing that he could not work. There is no response in file from the carrier.

DECISION

We affirm the hearing officer's decision.

The claimant is __ years old. He had been approved for spinal surgery in December 2000 which was being put off currently until recovery from his heart attack of March 2001. He also had knee problems that his doctor, Dr. S, recommended he take care of. Dr. S wrote a letter stating that the claimant, due to his combination of problems which included his back injury, would likely not be able to work "in this lifetime." In December 1998, a functional capacity evaluation reported that the claimant could work in a light duty capacity. The qualifying periods under review ran from May 27, 2000, through February 23, 2001.

Although another finder of fact could reach a different conclusion in this record, 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. While we cannot agree with the hearing officer that Dr. S has attributed inability to work solely to the claimant's knee problems, it was also apparent from the claimant's testimony that he has experienced many grave health problems that the hearing officer could find were factors in his employability. The test is whether the compensable injury would have caused the claimant to be "unable to perform any type of work in any capacity," without considering conditions subsequent to the injury. See Texas Workers' Compensation Commission Appeal No. 002192, decided October 26, 2000.

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.

The true corporate name of the insurance carrier is **COLONIAL CASUALTY INSURANCE CO.** and the name and address of its registered agent for service of process is

BILL HAGAN
12850 SPURLING DRIVE #250
DALLAS, TEXAS 75230.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge