APPEAL NO. 012132
FILED OCTOBER 15, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. Section 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 30, 2001. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 12th and 13th quarters.

The appellant (self-insured) appealed, relying heavily on a surveillance videotape and a 1997 report of Dr. T, the claimant's then treating doctor. The claimant responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable (low back) injury on _____, with a 15% impairment rating (IR); that impairment income benefits (IIBs) were not commuted; and that the applicable qualifying periods were from December 16, 2000 (beginning the 12th quarter), through June 15, 2001 (ending the 13th quarter). The claimant's testimony established that she has had five spinal surgery procedures with another procedure scheduled for July 31, 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). Rule 130.102(b) provides that an injured employee who has an IR of 15% or greater and who has not commuted any IIBs is eligible to receive SIBs if, during the qualifying period, the employee (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury, and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. The hearing officer's finding that the claimant's unemployment during the applicable quarters was a direct result of the impairment from the compensable injury has not been appealed and will not be discussed further.

At issue is whether the claimant has made a good faith effort to obtain employment commensurate with the employee's ability to work. The claimant contends that she has a total inability to work in any capacity. 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.

The hearing officer made a finding that the claimant "was unable to work in any capacity" during the quarters at issue. With regard to the narrative from a doctor which

specifically explained how the injury caused a complete inability to work, the hearing officer only refers to reports of Dr. R and Dr. F in Claimant's Exhibit No. 2 and Dr. WT report in Claimant's Exhibit No. 3. We urge a hearing officer to reference a specific report which addresses the requirements of Rule 130.102(d)(4) rather than several reports in different exhibits (*see* Texas Workers' Compensation Commission Appeal No. 010473, decided April 11, 2001). Claimant's Exhibit No. 2 contains a lengthy report dated March 22, 2000, and a briefer report dated March 12, 2001, from Dr. F. Those reports note chronic debilitating pain, use of controlled narcotics, the claimant's various surgeries, and concludes:

> I have talked to her about the possibility of a pump. She was placed into the hospital and we did a trial and it worked out great, but she became convinced that it exacerbated her stomach problems of Crohns disease and I don't think this had anything to do with this. Anyway, right now she is on MS Contin, Flexeril, MS IR, on narcotics with horrible back pain. I feel she is unable to work. She is considered disabled.

We conclude that Dr. F's reports, particularly the report during the qualifying periods, meets the requirement of a narrative report which specifically explains how the injury caused a complete inability to work.

The hearing officer also makes a blanket statement that "no other records including the videotape showed Claimant was able to return to work during the qualifying periods for the 12th and 13th quarters." We have carefully reviewed the videotape in evidence as Self-Insured's Exhibit No. 6, in conjunction with pages 55 through 66 of the transcript where the video was discussed while it was being shown during the CCH. In that discussion, it is clear that most of the video is not of the claimant but the claimant's mother or other female relative. The only small portion of the video which might contradict Dr. F's report is that of the claimant leaning into a car. The self-insured also asserts that Dr. T's report is an “other record” which shows that the claimant was able to return to work. The hearing officer did not reference Dr. T's report, but we note the release to work was in 1997, four years and at least one surgery prior to the qualifying periods in question. The hearing officer did not err in disregarding that report.

We hold that the hearing officer's decision is supported by the evidence, that the hearing officer did not err in applying the 1989 Act and Rule 130.102, and that the decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

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

The true corporate name of the insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

C.T. CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TX 75201.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

CONCUR IN THE RESULT:

Gary L. Kilgore
Appeals Judge