APPEAL NO. 012509
FILED NOVEMBER 28, 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 September 19, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters (issue as to second quarter added by agreement of parties). The claimant appeals on the basis that her doctor said that she was "100% disabled" during the relevant qualifying periods (January 14 through July 14, 2001), and that she was unable to work. The respondent (self-insured) replies, urging affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

The hearing officer did not err in finding that the claimant was not entitled to SIBs for the first and second quarters. The claimant contended that she had a complete inability to work at any job during the qualifying periods for the first and second quarters. 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[.]

In this case, the claimant testified that she did not look for work during the qualifying periods. The hearing officer determined that there was no narrative report from a doctor that specifically explained how the claimant's injury caused a total inability to work during either qualifying period, and that there was an other record which showed the claimant had some ability to work (sedentary) during the second quarter qualifying period.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer had to judge the credibility of the evidence before her in order to determine whether the evidence presented was sufficient to meet the criteria of Rule 130.102(d)(4). The questions of whether a narrative report specifically explains how the injury caused a total inability to work and whether an "other record" shows an ability to work are factual questions. 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 the hearing officer's determinations.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS ASSOCIATION OF SCHOOL BOARDS RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is

MR. MIKE HARPER
600 E. MARTIN LUTHER KING DRIVE
ENNIS, TEXAS 75119.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge