APPEAL NO. 022909
FILED JANUARY 7, 2003

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 October 14, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th and 14th compensable quarters. The appellant (self-insured) appeals this decision. The appeal file contains no response from the claimant.

DECISION

Affirmed.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

> An employee is entitled to [SIBs] if on the expiration of the impairment income benefits [IIBs] period computed under Section 408.121(a)(1) the employee:
>
> (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
>
> (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
>
> (3) has not elected to commute a portion of the [IIBS] under Section 408.128; and
>
> (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 130.102(d)(4) (Rule 130.102(d)(4)) states that the "good faith" criterion will be met 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[.]

A finding of no ability to work is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995. The hearing officer determined that the claimant provided a narrative report, which specifically explains how the compensable injury caused a total

inability to work during the qualifying periods in question. Additionally, the hearing officer explained that the medical report of Dr. B, dated September 26, 2001, which the self-insured contends shows that the claimant had an ability to work, was "speculative and does not show that the claimant had an ability to work at all, let alone during the periods in question." Nothing in our review of the record indicates that the hearing officer's determination that the claimant is entitled to SIBs 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 (Tex. 1986).

With regard to the self-insured's argument that the testimony of the vocational counselor, who relayed her interpretation of Dr. B's opinion as to the claimant's work abilities, we are not persuaded that the hearing officer was obliged to consider the testimony of the witness as constituting a record within the meaning of Rule 130.102(d)(4).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SD
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Edward Vilano
Appeals Judge