APPEAL NO. 030530
FILED APRIL 14, 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 January 29, 2003. The hearing officer resolved the disputed issues by determining that the claimant is not entitled to supplemental income benefits (SIBs) for the first or second quarter. The claimant appeals this decision, as well as the findings of fact upon which it is based. The respondent (carrier) urges affirmance.

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 benefit [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.

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[.]

Whether the claimant established that he had no ability to work during the qualifying periods in question was a factual determination for the hearing officer. The hearing officer found that the claimant did not provide a narrative establishing a total inability to work and that he had some ability to work during the qualifying periods in question.

Nothing in our review of the record indicates that the hearing officer's decision is 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).

We find no support for the claimant's argument that the hearing officer was precluded from finding that the report of the carrier's required medical examination (RME) doctor constituted a record showing an ability to work. In Texas Workers' Compensation Commission Appeal No. 020790, decided May 20, 2002, cited by the claimant, the hearing officer determined that the report of the carrier RME doctor contained contradictory statements regarding the claimant's ability to return to work and chose to discount it as a record showing an ability to work and the Appeals Panel affirmed the hearing officer's decision. However, that case does not stand for the proposition that a carrier RME doctor's report cannot constitute another record showing an ability to work.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

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Chris Cowan
Appeals Judge

CONCUR:

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Daniel R. Barry
Appeals Judge

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Thomas A. Knapp
Appeals Judge