APPEAL NO. 031090
FILED JUNE 3, 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 April 10, 2003. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th quarter. In his appeal, the claimant argues that the hearing officer's SIBs determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) by demonstrating that he had no ability to work in the qualifying period for the 11th quarter of SIBs. The hearing officer determined that there were other records showing that the claimant had some ability to work in the qualifying period. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the determination that other records show the claimant had some ability to work, or the determination that the claimant is not entitled to SIBs for the 11th quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We must affirm the hearing officer's determination that the claimant is not entitled to SIBs for the 11th quarter because the hearing officer's finding that there were other records that show that the claimant had some ability to work in the qualifying period for the 11th quarter is not so against the great weight of the evidence as to compel its reversal. However, we reverse the hearing officer's determination that there is not a narrative that specifically explains how the claimant's injury caused a total inability to work. Dr. G was appointed by the Texas Workers' Compensation Commission (Commission) pursuant to Section 408.151 and Rule 130.110 to serve as the designated doctor for the purpose of determining whether the claimant's medical condition had improved sufficiently to allow the claimant to return to work. The Commission did not receive Dr. G's report until February 10, 2003, after the end of the qualifying period for the 11th quarter; thus, it was not entitled to presumptive weight for purposes of the quarter at issue in this case. Rule 130.110(a). Nevertheless, after reviewing Dr. G's report, we believe that the only reasonable interpretation to be given to the report is that Dr. G's opinion is that the claimant "is not able to return to work in any capacity." Dr. G provides a detailed explanation for that conclusion and we believe that the hearing officer's determination that Dr. G's report is not a narrative that specifically explains how the injury caused a total inability to work is so against the great

weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, we reverse the determination that the claimant did not provide a narrative and render a new determination that there is a narrative that specifically explains how the claimant's injury caused a total inability to work. In addition, we note that Dr. G's report is entitled to presumptive weight as of February 10, 2003, which is during the qualifying period for the 12th quarter. Finally, we note that in Texas Workers' Compensation Commission Appeal No. 022604-s, decided November 25, 2002, we held that:

> When the designated doctor is properly appointed under Section 408.151 and Rule 130.110 to consider the issue of whether the claimant's medical condition has improved sufficiently to allow the claimant to return to work, the procedures under Section 408.151 and Rule 130.110 control over the provisions of Rule 130.102 pertaining to entitlement to SIBs. Use of the designated doctor for return to work determinations gives presumptive weight to the designated doctor's opinion over other evidence normally used to decide the Rule 130.102(d)(4) issues of inability to work, narrative report, and "other records."

Finally, the hearing officer did not err in determining that the claimant did not satisfy the good faith requirement pursuant to Rule 130.102(e) during the qualifying period for the 11th quarter. The record reflects that the claimant did not document job search efforts in each week of the qualifying period. Thus, the claimant did not satisfy the good faith requirement under Rule 130.120(e), which specifically requires that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts."

The hearing officer's decision and order are affirmed. However, her determination that the claimant did not provide a narrative that specifically explains how the injury caused a total inability to work is reversed and a new determination is rendered that Dr. G's report is a sufficient narrative.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Edward Vilano
Appeals Judge