APPEAL NO. 032682
FILED DECEMBER 1, 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 September 8, 2003. The hearing officer determined that appellant (claimant) did not make a good faith effort to obtain work commensurate with his ability to work and that he is not entitled to supplemental income benefits (SIBs) for the seventh quarter. Claimant appealed the relevant determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and render.

Claimant contends that the hearing officer erred in determining that he is not entitled to SIBs. Claimant contends that he had no ability to work during the qualifying period, that his doctors' reports showed he cannot work, and that the hearing officer erred in determining that he did not act in good faith and is not entitled to SIBs for the seventh quarter. The hearing officer did not make any findings regarding whether other records show that he is able to return to work but did find that claimant did not have an adequate narrative report from a doctor that specifically explains how the injury causes a total inability to work. Claimant was able to testify at the hearing and testified about his various problems. Medical reports state that claimant was injured on _____, when he struck his head on a concrete floor and fractured his skull. Claimant developed an intercranial hemorrhage primarily in the frontal lobe of his brain and underwent a right front lobectomy and removal of a hematoma. Medical records state that he showed additional bleeding bilaterally. In a March 22, 2000, report, Dr. D said: (1) claimant was no longer threatening his family or hallucinating after treatment with risperidone; (2) claimant's psychotic symptoms have resolved; (3) claimant continues to behave inappropriately and act like a child; (4) his family has difficulty getting him out of bed to bathe and take care of his activities of daily living; and that (5) claimant is not able to work at this time. In a May 16, 2000, report, Dr. M said: (1) claimant continues to have decreased ability to exercise and show restraint and self-control: (2) his behavior is not as agitated and he has responded well to medications; and (3) claimant and his family do not wish to pursue a referral to an "inpatient *prevocational* head injury program" that has aided many patients in "returning to independent living and employment at times." [Emphasis added.] In a July 19, 2001, report, Dr. M said: (1) claimant has ongoing problems with mild to moderate cognitive deficits, behavioral dysfunction, inability to control certain behaviors, apathy, and ininitiation; (2) claimant has chronic headaches, dizziness, and vertigo that is felt to be probably due to his head injury; (3) Dr. M feels claimant would benefit from an "inpatient prevocational head injury program" and this facility may be able to "clear up" the issue and more definitively assess claimant's ability to do any job activities; and (4) claimant

and his family do not want to do this inpatient program because they do not want to be separated as a family. In an August 20, 2001, report, Dr. E stated that: (1) claimant had great difficulty supplying information; (2) it is reported that claimant has bowel incontinence when he goes out in public; (3) in the beginning claimant would wander out of the house and had poor judgment, but this improved with medications; (4) claimant plays hide and seek "incompetently"; (5) comprehending what claimant said was often an issue for Dr. E; (6) claimant's impairments seem to be quite pervasive [a]ffecting virtually every area measured; (7) claimant shows severe impairment of his ability to think, reason and solve problems; (8) academically, claimant is functioning at a second to fifth grade level; (9) claimant has dementia secondary to traumatic brain injury; and (10) claimant has "cognitive disorder NOS" (personality changes and *lack of motivational drive secondary to frontal lobe damage*). Dr. E concluded that claimant "shows signs consistent with a *frontal lobe syndrome including pervasive apathy*, poor hygiene, a lack of insight into his difficulties; impulsivity; concentration and attentional problems." [Emphasis added.] Dr. E said, "Presently, [claimant] is two years post injury. It is unlikely that there will be significant gains . . . . Any changes will be gradual and modest. In my opinion, [claimant] will never be gainfully employed and is permanently disabled." In a January 21, 2002, report, Dr. T stated that: (1) claimant's wife reported that claimant had to be forced to take two showers per week; (2) claimant's speech is very simple and has "long latencies"; (3) claimant's affect is bland and flat with occasional inappropriate smiling: (4) claimant has a poverty of thoughts; (4) claimant has "personality change" and "mood disorder" "secondary to traumatic brain injury"; and (5) claimant has "chronic severe mental disability." In a January 28, 2002, letter, Dr. S stated: (1) claimant has "frontal lobe syndrome with apathy"; (2) claimant demonstrated virtually no interest in doing anything and had very little motivation; (3) the lack of motivation and interest were "sequelae from his frontal lobe damage"; (4) it appeared that he had very little potential to benefit by rehabilitation and the *chance* for return to gainful work activities would be minimal; (5) claimant has obvious significant evidence of frontal lobe dysfunction; (6) Tasman's "Psychiatry" textbook describes the "apathy syndromes" that can occur with frontal lobe lesions and state that, "[p]atients with apathy demonstrate a lack of interest not only in their usual interests . . . but in routine daily activities"; (7) claimant has "frontal lobe syndrome" and "mild mental subnormality"; and (8) examination and review of records indicate that claimant "does have significant neuropsychological deficits that will preclude him from performing gainful work activities." Dr. S said the chance of improvement is felt to be very small. In a February 20, 2002, report, Dr. V said: (1) it is clear that claimant has cognitive dysfunction as a result of a traumatic brain injury; (2) claimant is somewhat apathetic in his appearance with a flat affect; (3) he was able to perform 28 out of 30 possible responses with the only erroneous responses being with reference to the date of the week and the country of his current residence; (4) claimant's motor skills are normal; (5) claimant continues to have some symptoms of cognitive dysfunction predominantly with emotional disturbance, problems with complex integrated cerebral function, and even some episodic neurological dysfunction with seizures although they seem to be fairly stable." Dr. V then said, "from my perspective, [claimant] can return back to work on a full-time basis but he is unable to do tasks that require sequencing or multi-step operation. He should be able to do simple manual type of activities without difficulty."

It appears that the total context of medical records discussing statements by doctors quoted by the hearing officer about claimant "not want[ing] to participate" in a rehabilitation program, having little interest in doing anything, and having "little motivation" were not considered. We also note that the hearing officer noted that Dr. T reported that claimant had a number of subjective psychological problems. Dr. T did not say that and we would note that it appears clear that claimant's problems are not subjective, but are objectively documented as being due to the removal of a lobe of his brain.

We note that even Dr. V did not deny that claimant has cognitive dysfunction and emotional disturbance. Dr. V did not discuss how claimant could make any effort to obtain work if he could not do "sequencing" that would logically be involved in a job search and also in the day to day process of getting to work. The great weight and preponderance of the evidence shows that claimant is not adequately performing the activities of daily living, such as those involved in hygiene. We also note that Dr. V did not consider or discuss the effect of claimant's apathy syndrome on his ability to work.

We conclude that this is one of the rare instances when the hearing officer's determinations regarding good faith, ability to work, and SIBs entitlement are 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 reverse the hearing officer's determinations that: (1) claimant had the ability to work during the qualifying period; (2) claimant did not provide a narrative report from a doctor that specifically explains how the injury causes a total inability to work, and (3) claimant did not make a good faith effort to obtain employment because they are against the great weight and preponderance of the evidence.

We reverse the hearing officer's determination that claimant is not entitled to SIBs for the seventh quarter and render a decision that claimant is entitled to SIBs for the seventh quarter.

According to information provided by carrier, the true corporate name of the insurance carrier is **SECURITY INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.

_____
Judy L. S. Barnes
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge