

## APPEAL NO. 990348

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 15, 1999. On the single issue before her, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the seventh compensable quarter. The claimant appeals, urging that the decision is not right, that she made her best efforts even though she had not gone to pain management, and that she started back to work with her employer at the end of the filing period. The respondent (carrier) urges that there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer and asks that the decision be affirmed.

### DECISION

Affirmed.

The claimant sustained a work-related injury on \_\_\_\_\_, when she slipped and fell with a cart of meat falling on her, knocking her unconscious. She underwent surgery some two years later and was subsequently assessed an impairment rating in excess of 15%. Although the claimant states she was not released to duty by her doctor, there is evidence in a report from her doctor that she was released to light duty on February 23, 1998. Of course, it has been repeatedly held that the question of whether there is some ability to work for the purpose of qualifying for SIBS does not necessarily hinge on a doctor's release to return to work. Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994. Texas Workers' Compensation Commission Appeal No. 982149, decided October 21, 1998. The issue presented in this case is the claimant's entitlement to SIBS for the seventh compensable quarter, the filing period for which ran from January 21, 1998, to April 21, 1998. One of the requirements to qualify for SIBS is that the injured employee attempt in good faith to seek employment commensurate with the ability to work. Section 408.143. The evidence indicates that the claimant sought or made two job contacts during the filing period: one contact with the Texas Workforce Commission (TWC) on March 26, 1998, where the claimant stated she went to first and then remembered, "I had my job at (employer) open," and then she made an application with her former employer with an indicated date of April 4, 1998. She ultimately went back to part-time work in a light-duty position with her former employer on April 13, 1998, although she did not have the pain management therapy recommended by her doctor.

The hearing officer determined that the claimant had some ability to work and did not attempt in good faith to seek or obtain employment during the filing period in issue. From our review of the evidence, we find a sufficient evidentiary basis to support the determination that the claimant had some ability to work during the filing period, at least following the functional capacity evaluation on February 10, 1998. Whether there is some ability to work is essentially a factual question for the hearing officer's determination based upon medical and other evidence before him or her. Texas Workers' Compensation Commission Appeal No. 961424, decided September 5, 1996; Texas Workers'

Compensation Commission Appeal No. 941154, decided October 10, 1994. The claimant did not seek any employment until she made a single contact with the TWC on March 26, 1998, and subsequently with her former employer. The hearing officer found and concluded that this was not sufficient to show a good faith attempt to obtain employment commensurate with the claimant's ability to work. This too is basically a factual matter for the determination of the hearing officer. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. A hearing officer, in determining this issue, can appropriately take into consideration the pattern of a job search, the diligence and forethought given by a claimant to searching for employment, as well as the timing and number of jobs sought. Given the limited number of jobs sought, the inactivity of looking for employment for significant periods of time during the filing period, and the lack of any reasonable pattern to the job search, there was a sufficient basis for the hearing officer's determination of a good faith effort not having been shown. Texas Workers' Compensation Commission Appeal No. 982512, decided December 2, 1998; Texas Workers' Compensation Commission Appeal No. 970046, decided February 20, 1997; Texas Workers' Compensation Commission Appeal No. 972507, decided January 7, 1998. Accordingly, the decision and order are affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge