APPEAL NO. 992000

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 July 28, 1999. On the single issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the eighth compensable quarter. The claimant appeals, urging that the great weight of evidence "extends the claimant is entitled to (SIBS) for the 8th [sic]." The respondent (carrier) argues that there is sufficient evidence to support the decision of the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed.

The claimant sustained a back injury on _____, lifting a bundle of pants; has not worked since that date; subsequently had surgery in January 1996; states that his doctor, Dr. L, recommends another surgery which was not approved through the second-opinion spinal surgery process; that he still has pain and feels he is getting worse; and that he is on medications; feels that he is not able to work, and acknowledges that he has not sought any employment at all. The SIBS quarter in issue runs from April 16, 1999, through July15, 1999. In support of his position that he is not able to work at all, the claimant submits Dr. L's opinion that he need surgical interventions and that he is totally and 100% disabled and not able to engage in any type of gainful or full employment. In opposition, the carrier introduced medical records from two evaluations by a carrier doctor, Dr. B, who assessed a 15% impairment rating, and states that, following the impairment assessment, a functional capacity evaluation was partially performed but not completed showing a capability of sedentary activity eight hours per day, and that it was his opinion that the claimant is capable of performing sedentary activity for eight hours a day with change of position every 30 to 40 minutes. Carrier also introduced the report of Dr. V, who did a second-opinion spinal surgery examination and did not recommend surgery. Dr. V stated that most of claimant's problems relate to mechanical pain in his lower back and that he could not find evidence of lumbar radiculopathy. He recommended a graded and intense program of rehabilitation and pain management. A video showing some limited walking activity on the part of the claimant was admitted.

From the evidence presented, the hearing officer found that the claimant had some ability to work, that is, to perform sedentary-type work and that he did not look for any work during the filing period in issue. While there was conflict in the evidence regarding an ability to work, this was a matter for the hearing officer to resolve. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Section 410.165(a). We have stated that where it is proven by medical evidence that there is no ability to work at all, then no job search at all can satisfy the requirement for an attempt in good faith to obtain or seek employment commensurate with the ability to work. Texas Workers' Compensation Commission Appeal No. 950581, decided May 30, 1995. This burden of proof is on the claimant. Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994. In weighing the evidence before him, the hearing officer could reasonably give greater weight to the opinion of Dr. B, and the other evidence presented by the carrier. We have reviewed the evidence of record and cannot conclude that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Accordingly, the decision and order of the hearing officer are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge