

APPEAL NO. 992041

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 11, 1999. On the single issue before him, the hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the fifth compensable quarter. The appellant (carrier) appeals, urging that the evidence established that the claimant had some ability to work, did not attempt in good faith to seek employment, and thus was not entitled to SIBS for the period in issue. The claimant responds that there is sufficient evidence to support the determination of the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the pertinent evidence in the case and it will only be outlined here. The claimant sustained a back injury on _____; subsequently underwent spinal surgery; and reached maximum medical improvement with a 26% impairment rating. She states that her condition worsened to the point that she had to have surgery to have hardware removed on December 15, 1998. She testified she was not able to work at all following her surgery and during her recuperation and that she was told not to work by her doctors. She described some of her limited daily activities which included driving short distances, cooking, and doing laundry. She testified that she had contacted and worked with the Texas Rehabilitation Commission on retraining possibilities. She did not look for employment during the filing period for the fifth quarter, which ran from January 4, 1999, to April 4, 1999, but states she did put in an application with the city around the first part of April.

In evidence are reports and opinions from her treating doctor and her surgeon covering the filing period which state that the claimant is totally disabled and not able to work. In an April 2, 1999, report, the surgeon specifically states that she is unable to walk, stand, or be seated for any extended period of time and that she is to avoid lifting, bending, stooping, and other similar activities. He states the recovery period is normally from six to nine months from the surgery. Her treating doctor also states that the claimant is unable to work because of her lower back condition for which she recently had surgery. In May 1999, the claimant was placed in a PRIDE rehabilitation program which she stated was eight hours a day. She states that in July 1999 she was released to work and that she found a job and started working about the time of the CCH.

For the period in issue here, the new SIBS rules under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) do not apply. Texas Workers'

Compensation Commission Appeal No. 991634, decided September 14, 1999 (Unpublished). The issue is whether there is sufficient evidence to support the hearing officer's finding that during the filing period, the claimant had no ability to work. From our review of the evidence, we conclude there was sufficient evidence in the medical reports of the surgery and postsurgery and the opinions expressed by the surgeon and treating doctor. The hearing officer obviously found the medical evidence on the lack of an ability to work convincing. Section 410.165(a). With sufficient medical evidence to show no ability to work during the filing period, the requirement that an attempt in good faith be made to seek employment commensurate with the ability to work (Section 408.143) is met.

Texas Workers' Compensation Commission Appeal No. 931147, decided February 3, 1994. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Elaine M. Chaney
Appeals Judge