

APPEAL NO. 000468

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 February 7, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the first quarter from October 5, 1999, through January 3, 2000. The hearing officer found that the claimant failed to make a good faith search for employment commensurate with his ability to work.

The claimant has appealed. He argues that his medical evidence proved he had the inability to work during the qualifying period and therefore fulfilled the requirements of having made a good faith search for employment in accordance with Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)), effective January 31, 1999. The respondent (carrier) responds that claimant's treating doctor assessed that he had light or sedentary work capacity and he did not meet the requirements in the rule of proving a complete inability to work.

DECISION

Affirmed.

The hearing officer has thoroughly summarized the facts. The qualifying period in issue ran from June 23 through September 21, 1999. The claimant injured his right knee when he slipped and fell on \_\_\_\_\_, while employed by (employer). He had surgery, developed an infection, and then had a debridement procedure. The impairment rating report for his injury noted that his primary problem was not being able to straighten his knee. Claimant wore an anterior cruciate ligament brace for support. A report from Dr. S dated September 22, 1999, noted that claimant had no pain or swelling, just stiffness. Dr. S completed an unrestricted release for claimant which assessed that he had full physical abilities.

The claimant testified about the job search he underwent; the hearing officer has explained why he found that this did not constitute a search in every week of the qualifying period and this part of the decision is not appealed. Claimant's contention that he could not work is based on the assessment of his treating doctor, Dr. C, and the fact that Dr. C had not "released" him to work. There are two short "Work Status Reports" from Dr. C, dated May 26, 1999, and October 6, 1999, which contain the simple statement that claimant is off work until further notice. A similar statement appears in examination notes dated June 14 and October 6, 1999. Dr. C wrote a brief "To Whom It May Concern" letter that is not dated. It states that the severity of his knee injury is such that he is unable to work, but the same letter states that a light to sedentary job would be all he is capable of doing although not for an eight-hour day.

The legislature has required that an applicant for SIBS make a search for employment "commensurate with the employee's ability to work." Section 408.142(a)(4). There is no express provision in the statute for avoiding this duty based upon an inability to work; however, the Texas Workers' Compensation Commission has recognized that in certain limited cases, the inability to work may be total, and therefore no search would be the best search that could be made in good faith. Proof of such limitation, however, must go beyond bald statements that the employee is off work; Rule 130.102(d)(3) states that good faith will be found if the employee:

- (3) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. . . .

The hearing officer, as finder of fact, must assess whether any medical evidence produced consists of a narrative that makes such a specific explanation. We cannot agree that the great weight and preponderance of the evidence is against the hearing officer's determination that the claimant had some ability to work during the period under review or that he was without support in the record. Therefore, the hearing officer could go on to evaluate whether his job search met the requirements of Rule 130.102(e).

We affirm the hearing officer's decision and order.

Susan M. Kelley  
Appeals Judge

CONCUR:

Gary L. Kilgore  
Appeals Judge

Judy L. Stephens  
Appeals Judge