

## APPEAL NO. 001079

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 May 3, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third or fourth quarter. The claimant appeals and argues that during the third quarter filing period there were "days" he was unable to look for work and his condition worsened to the point where he could not look for work during the fourth quarter period under consideration. Moreover, the claimant argues that because surgery was pending, he was not obligated to seek employment. The respondent (carrier) responds that the decision should be affirmed and recites supporting facts.

### DECISION

We affirm the hearing officer's decision.

The filing period for the third quarter ran from September 8 through December 7, 1999, and for the fourth quarter from December 8, 1999, through March 7, 2000. The claimant injured his neck and upper extremity on \_\_\_\_\_. The hearing officer has written an extremely comprehensive and detailed summary of the facts that we will not repeat here. As he pointed out, the claimant sought some employment for the third quarter, but not in every week of the filing period. Although he completed a course in heavy equipment operation through the Texas Rehabilitation Commission, the jobs he obtained were yard work projects of short duration. He did not search at all during the fourth quarter, citing the pendency of spinal surgery as the reason. He said that his condition worsened after the third quarter.

In response to the hearing officer, the claimant said that he did not consider equipment operating to be heavy work and that it involved essentially pushing buttons. He said that the demolition jobs he sought during the third quarter would entail nothing much more than this.

Spinal surgery was recommended and approved for the claimant on April 21, 2000. It was pending as of the CCH.

We agree with the hearing officer that pending surgery per se does not absolve a claimant in every case of the requirement to seek employment commensurate with his ability to work, nor do we necessarily agree that Texas Workers' Compensation Commission Appeal No. 962495, decided January 22, 1997, so held. In this case, the types of jobs the claimant sought in the heavy equipment or demolition arena were ones he said he could do, or were of short-term duration. In any case, as the hearing officer discussed, the new SIBs rule, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102), governs analysis of the job search undertaken by SIBs claimants and previous Appeals Panel decisions that conflict with provisions of those rules have been

superceded. The legislature has required a search for employment in order to qualify for SIBs, which are intended to foster reentry to employment, and the Texas Workers' Compensation Commission has promulgated rules that allow for those rare situations where no work at all can be done, as well as set parameters to ensure that efforts at seeking employment are directed to that end as opposed to only qualifying for benefits. The hearing officer could certainly believe that the evidence produced here on inability to work fell short of a narrative and was also contradicted by other medical reports showing an ability to work. As such, it fell short of the requirements of Rule 130.102(d)(3). We have reviewed the decision of the hearing officer and find that the rules have been properly applied and that the fact findings to which the rule was applied are sufficiently supported by the record. We affirm the decision and order of the hearing officer.

---

Susan M. Kelley  
Appeals Judge

CONCUR:

---

Tommy W. Lueders  
Appeals Judge

---

Philip F. O'Neill  
Appeals Judge