

## APPEAL NO. 001650

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 June 14, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second, third, and fourth quarters. The hearing officer specifically found that the claimant did not have an inability to work during the qualifying periods in issue and, since she had not sought employment, she was not entitled to SIBs.

The claimant appeals and argues the evidence that shows an inability to work. The respondent (carrier) responds that the decision is correctly made under the applicable SIBs administrative rules.

### DECISION

We affirm the hearing officer's decision.

The claimant slipped and fell on \_\_\_\_\_, injuring her neck, back, knees, ribs, and arm and had related urinary problems. (From the medical records, it appears that this latter problem is in the nature of recurrent infections rather than incontinence). At the time of injury, the claimant worked as a charge nurse with adolescents. The qualifying periods for the three quarters under review ran from May 20, 1999, through February 24, 2000. The claimant's treating doctor was Dr. S, who opined that the claimant was unable to work. Relevant to the time periods under review were opinions of Dr. SW, for the carrier, and Dr. D, appointed by the Texas Workers' Compensation Commission, who felt that the claimant had the ability to work in a sedentary capacity. The hearing officer has detailed more of the medical evidence in her decision. The claimant testified that she could not work due to pain and problems sitting or standing. However, she said that injections had helped alleviate her pain.

It is worth noting that a good faith job search will not mean, in every case, a search for full-time employment. Rather, the search must be commensurate with the claimant's ability to work. Section 408.143(a)(3). Accordingly, "no" search can only meet the requirements of a good faith search if there is the complete inability to perform any type of work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)) (now Rule 130.102(d)(4)). The inability must be established through a narrative from a doctor that explains how the residual injury causes such a total inability to work and there must be no other records which show that the employee is able to return to work. New Rule 130.102 precludes a simple weighing of conflicting medical evidence and all three portions of Rule 130.102(d)(3) (now Rule 130.102(d)(4)) must be applied. Texas Workers' Compensation Commission Appeal No. 992197, decided November 18, 1999.

Therefore, while the claimant appears not to have the ability to return to her old line of employment, she does have the obligation to search for work within her current capability in order to qualify for SIBs. The search must be made for every week of the qualifying period. Rule 130.102(e).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the hearing officer's decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert E. Lang  
Appeals Panel  
Manager/Judge