

## APPEAL NO. 001794

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 3, 2000. With respect to the single issue before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh compensable quarter. In its appeal, the appellant (carrier) argues that the hearing officer erred in her determinations that the claimant made a good faith effort to look for work commensurate with her ability to work in the qualifying period for the seventh quarter of SIBs and that the claimant is entitled to SIBs for the seventh quarter. In her response to the carrier's appeal, the claimant urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant's unemployment in the qualifying period for the seventh quarter of SIBs was a direct result of her impairment and that determination has, therefore, become final pursuant to Section 410.169.

### DECISION

Reversed and a new decision rendered that the claimant is not entitled to SIBs for the seventh quarter.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that she reached maximum medical improvement on November 19, 1997, with an impairment rating of 17%; that she did not commute her impairment income benefits; that the seventh quarter of SIBs ran from May 11 to August 9, 2000; that the qualifying period for the seventh quarter ran from January 28 to April 27, 2000; and that the claimant did not seek employment during the qualifying period for the seventh quarter. In an unappealed finding of fact, the hearing officer found that the claimant failed to establish that she was unable to perform any work during the portion of the qualifying period from January 28 to March 19, 2000. Nevertheless, the hearing officer found that the claimant had made a good faith effort to look for work in that period because she had surgery on March 20, 2000, to implant a neurostimulator and "[i]f the Claimant had undergone a search for employment, a truthful disclosure of pending surgery and the need for recuperative time off would have impacted the ability of the Claimant to accept offer[ed] employment."

In making her determination that the claimant had satisfied the good faith job requirement in this case, the hearing officer acknowledged that the claimant's entitlement to SIBs in the seventh quarter was to be decided under the "new" SIBs rules. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) provides that an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. The hearing officer then relies on Texas Workers' Compensation Commission Appeal No. 962495, decided January 22, 1997, and determines that the claimant's job search efforts would have been futile because of the pending surgery. As noted above, the hearing officer determined that the

claimant did not sustain her burden of proving that the claimant had no ability to work in the portion of the qualifying period prior to the surgery. As such, in accordance with Rule 130.102(e) the claimant had an obligation to look for work in every week of the qualifying period that she had an ability to work. Rule 130.102(e) simply does not provide for an exemption from the job search requirement because of the futility of such efforts in light of pending surgery. Accordingly, we reverse the hearing officer's determination that the claimant is entitled to SIBs for the seventh quarter and render a new decision that she is not entitled to those benefits.

The hearing officer's determination that the claimant is entitled to SIBs for the seventh quarter is reversed and a new decision rendered that the claimant is not entitled to SIBs for the seventh quarter.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge