

## APPEAL NO. 001820

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 10, 2000. With respect to the issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the seventh quarter. In his appeal, the claimant argues that the hearing officer's determinations that he did not make a good faith effort to look for work commensurate with his ability to work in the qualifying period for the seventh quarter and that he is not entitled to SIBs for the seventh quarter are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant was underemployed during the qualifying period as a direct result of his impairment from the compensable injury.

### DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_. The parties stipulated that the claimant's impairment rating is greater than 15%; that he did not commute his impairment income benefits; and that the seventh quarter of SIBs ran from October 14, 1999, to January 12, 2000. The qualifying period was identified as the period from July 29 to September 30, 1999. The claimant testified that he injured his left shoulder; that his original treating doctor was Dr. P; that Dr. P performed three surgeries on his left shoulder before Dr. P retired in April 1999; that when Dr. P retired, the claimant changed treating doctors to Dr. C; and that Dr. C performed a fourth surgery on his left shoulder in April 2000. The claimant explained, and records from Dr. C corroborate, that the fourth shoulder surgery was being recommended in the qualifying period; however, it had to be postponed because of the claimant's diabetes.

The claimant testified that during the qualifying period for the seventh quarter of SIBs he worked at an auto auction driving cars. He stated that he typically worked on Wednesday and Thursday and that the number of hours he worked depended upon the number of cars he had to deliver on a given day. The claimant's Application for [SIBs] (TWCC-52) reflects that he also sought employment at four locations on four different dates in September 1999.

The claimant's entitlement to SIBs is to be determined in accordance with the new SIBs rules. Claimant initially argues that he has satisfied the good faith requirement under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) because he returned to work in a position which is "relatively equal" to his ability to work. The hearing officer determined that the claimant's part-time employment with the auto auction was not relatively equal to his ability to work because the claimant did not have any restrictions on the number of hours per week he could work. Indeed, there was no evidence presented that the claimant was limited to part-time work. Accordingly, we find

no error in the hearing officer's having determined that the part-time work performed by the claimant in the qualifying period was work that was not "relatively equal to his ability to work."

Because the claimant had some ability to work in the qualifying period and he did not establish good faith under Rule 130.102(d)(1), he was required to establish good faith under Rule 130.102(d)(4) and Rule 130.102(e), which requires that he look for work in each week of the qualifying period and document his job search efforts. In this instance, as noted above, the claimant's TWCC-52 for the seventh quarter only lists four job searches in the qualifying period all of which occurred in September 1999. Accordingly, the hearing officer did not err in determining that the claimant is not entitled to SIBs for the seventh quarter because he did not satisfy the requirement of Rule 130.102(e) of looking for work in each week of the qualifying period.

Finally, we briefly consider the claimant's argument that the hearing officer "refused to follow Appeals Panel decisions regarding 'good faith effort.'" We find no merit in this assertion. A review of the hearing officer's decision clearly demonstrates that he applied Rule 130.102, which defines good faith and establishes methods for proving the same, and he was required to do so. To the extent that Appeals Panel decisions exist which can be interpreted as being inconsistent with the new SIBs rules, eligibility to benefits must be determined in accordance with the rules.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge