

## APPEAL NO. 002497

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 September 21, 2000. The hearing officer considered the issue of whether the appellant (claimant) was entitled to supplemental income benefits (SIBs) for his 14th quarter of eligibility. The 14th quarter qualifying period under review ran from February 26 through May 27, 2000.

The hearing officer held that the claimant failed to adequately fulfill the requirement for a good faith search for employment, in that he did not search for work in every week of the qualifying period, as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)). The hearing officer agreed that the claimant's unemployment was the direct result of his impairment.

The claimant has appealed, arguing that he is still under his doctor's care and has not been released to work. He said he made a good faith search directed to the field of employment where he was most likely to be employed. There is no response from the carrier.

### DECISION

Affirmed.

The claimant, who was 64 years old at the time of the CCH, testified that he had gone through the tenth grade in school and had no special training. He was injured on \_\_\_\_\_, while stacking bricks in the warehouse for (employer). He injured his lower back but had not had surgery. The claimant described his abilities, saying that his condition varied from day to day, with ability to drive but limitations on walking or lifting.

The claimant testified that he sought employment by going to various companies and asking about or applying for available work that he could do. He said he sought about two jobs a day. He looked for jobs in security, janitorial work, and auto parts stock room work. He said that he wrote down every job he sought on his Statement of Employment Status (TWCC-52). He said that in previous years, he had interviewed with the Texas Rehabilitation Commission (TRC) but they said they could not help him. He had not contacted them during the quarter under review. The claimant had not sought work through the Texas Workforce Commission (TWC). He did not look in the newspaper for job openings. The claimant was receiving Social Security retirement benefits.

The claimant's treating doctor, Dr. Y, wrote in a report dated April 14, 2000, that the claimant had mildly symptomatic degenerative disc disease, but also had a progressive peripheral vascular disease with affected his left leg. Dr. Y recommended that the claimant be evaluated by a vascular surgeon. He said that claimant could not return to full duty, due

to his age and vascular disease, but could work light duty, with no lifting over 50 pounds, no climbing, stooping, or bending, and no prolonged walking.

Although the claimant said he has not been "released," he is required to search for work commensurate with what Dr. Y has stated he can do. Section 408.143(a)(3).

Rule 130.102(e) states:

- (e) Except as provided in subsections (d)(1)(2), (3), and (4) of this section, 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 search efforts.

We have reviewed the TWCC-52 filed by the claimant and although he sought employment in most weeks, he did not seek employment in every week of the filing period (a week during his qualifying period consisting of Sunday through Saturday). Therefore, under the rule, he does not qualify for SIBs. We affirm the hearing officer's decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Philip F. O'Neill  
Appeals Judge