

## APPEAL NO. 002725

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 20, 2000, a hearing was held. The hearing officer determined that the claimant obtained employment at a job commensurate with his ability to work during the qualifying period for the 14th quarter and was entitled to supplemental income benefits (SIBs) for the 14th quarter. The appellant (carrier) appealed, asserting that the respondent (claimant) did not look for work during each week of the qualifying period and was not entitled to SIBs for the 14th quarter. There is no response in the file from the claimant.

### DECISION

Affirmed.

The claimant sustained a compensable injury, was assigned an impairment rating of 15%, and did not commute any portion of his impairment income benefits. At the time of his injury, the claimant was working in a job which was characterized as demanding heavy physical labor. That characterization was not disputed. It is undisputed that the claimant has a medium to light duty release with restrictions and is unable to return to his preinjury employment.

It is also undisputed that during the qualifying period for the 14th quarter, the claimant had returned to work full-time as a lube technician and earned less than 80% of his preinjury wage. Although the carrier acknowledges that the claimant's employment as a lube technician is "arguably" commensurate with the claimant's ability to work, it asserts that the claimant failed to make a good faith effort to seek employment commensurate with his ability to work because he did not look for work each week of the qualifying period before accepting his current employment.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) states that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the employee's ability to work. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000, notes that if a claimant has returned to work in a position which is relatively equal to the injured employee's ability to work, the employee does not have to show that he looked for work every week of the qualifying period. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight of the evidence as to be manifestly wrong or unjust.

The decision and order of the hearing officer are affirmed.

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Kenneth A. Huchton  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Thomas A. Knapp  
Appeals Judge