

APPEAL NO. 002883

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 16, 2000, a contested case hearing was held. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appealed and the respondent (carrier) responded. The carrier contends that the claimant's appeal was not timely filed. The claimant's appeal was timely filed.

DECISION

The hearing officer's decision is affirmed.

The claimant testified that he reinjured his shoulders and neck at work on _____. He had a prior work-related injury in 1994. The parties stipulated that, with regard to the 1996 injury, the claimant has a 20% impairment rating; did not elect to commute impairment income benefits; the qualifying period for the first quarter of SIBs was from November 26, 1999, to February 24, 2000; and the first quarter of SIBs was from March 9 to June 7, 2000.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant's Application for SIBs (TWCC-52) for the first quarter reflects that he did not look for work during the qualifying period. The claimant contended that he had no ability to work during the qualifying period for the first quarter due to his 1996 compensable injury and thus was entitled to SIBs. Rule 130.102(d)(4) provides 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 been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The claimant testified concerning his injuries and his home therapy program during the qualifying period which consisted of using an exercise machine, lifting a 10-pound weight, and walking. Letters from Dr. R mention the claimant's need for left shoulder surgery and weakness in the claimant's hands and state that the claimant is prevented from doing any type of work. The hearing officer determined that the claimant failed to provide a narrative report from a doctor which specifically explains how the injury causes a total inability to work. The hearing officer further determined that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work. The claimant contends that the hearing officer's decision is not supported by the facts or law. We conclude that the hearing officer's determination is supported by sufficient evidence and is not so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge