

APPEAL NO. 002954

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq* (1989 Act). On December 4, 2000, a 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 ninth quarter. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that during the qualifying period for the ninth quarter (May 24 to August 22, 2000), the claimant possessed a sedentary ability to work, the claimant did not search for work, and the claimant did not attempt in good faith to obtain employment commensurate with his ability to work.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE Sec. 130.102 (Rule 130.102). At issue was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the ninth quarter. 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. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, 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 claimant sustained a compensable back injury on _____, for which he has had multiple surgeries, the last one in July 1999, and has a 20% impairment rating. He testified that he had no ability to work during the qualifying period and it is undisputed that he did not work or look for work during the qualifying period. Dr. M, the claimant's treating doctor, wrote before, during, and after the qualifying period that the claimant is totally and permanently disabled. Dr. K wrote that a functional capacity evaluation done during the qualifying period placed the claimant in the sedentary to light category. The hearing officer's decision is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge