

## APPEAL NO. 010193

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 January 8, 2001. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first and second quarters but was not entitled to SIBs for the third and fourth quarters. The hearing officer's decision regarding the nonentitlement of SIBs for the third and fourth quarters has not been appealed and has become final pursuant to Section 410.169.

The appellant (carrier) appeals the hearing officer's determinations on the first two quarters on the basis of an insufficiency of the evidence to support the hearing officer's decision. The claimant responds, urging affirmance.

### DECISION

Affirmed.

Sections 408.142 and 408.143 set out the statutory requirements for entitlement to SIBs. At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with his ability to work. The hearing officer's determination that the claimant's unemployment during the qualifying periods for the first and second SIBs quarters was a direct result of the claimant's impairment from the compensable injury has not been appealed and will not be addressed further.

The parties stipulated, or the hearing officer found, the required jurisdictional requirements for SIBs including that the qualifying period for the first quarter was from August 22, 1999, through November 20, 1999, with the second quarter qualifying period being from November 21, 1999, through February 19, 2000.

It is undisputed, and the record supports, that the claimant had approved spinal surgery in the form of a decompressive laminectomy at L3 through L5 and a right discectomy at L4-5 on August 25, 1999, three days after the beginning of the first quarter qualifying period. Various postoperative progress notes indicate that during the first quarter qualifying period the claimant was not ready to begin postsurgical rehabilitation. On December 3, 1999, 13 days into the second quarter qualifying period, the treating surgeon commented that the claimant was "ready to begin post surgical rehab" but that the claimant was to remain "off work as required by the doctor." The claimant was retained in an off-work status while in postsurgery rehabilitation until February 21, 2000 (two days after the end of the second quarter qualifying period), when he was released to very light duty.

The hearing officer referenced Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) and commented that the "combined records provide the narrative from a doctor which specifically explains how the injury caused a total inability to work during the qualifying periods for the 1st and 2nd quarters . . . [and that] [t]here are

no other records showing that the claimant was able to return to work . . . .” In fact, there were no records which showed that the claimant was able to work during the August 22, 1999, through February 21, 2000, time frame. The carrier only argues that the evidence is insufficient to support the hearing officer’s decision.

We find the evidence sufficient to support the hearing officer’s decision and are satisfied that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer’s decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge