APPEAL NO. 010809

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 March 19, 2001. The sole issue was whether the appellant (claimant) was eligible for the first quarter of supplemental income benefits (SIBs). The hearing officer found that the claimant was not. The claimant appeals on the basis that the decision was against the great weight and preponderance of the evidence. The respondent (carrier) responds urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, with an impairment rating (IR) of 23%; the claimant had not commuted any portion of the impairment income; and that the first quarter qualifying period began on July 12, 2000, and continued through October 10, 2000.

On October 13, 2000, the claimant had a functional capacity evaluation performed; the results of that exam indicated that the claimant had some ability to work in a "seated position." In contrast, the treating physician testified at the hearing that the claimant did not have the ability to work at any employment since, although he could sit for up to four hours, there would inevitably be a time during the day when the chronic pain would require him to lie down. The claimant stated he did not look for work during the qualifying period because he did not believe he was capable of working.

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). Rule 130.102(b) provides that an injured employee who has an IR of 15% or greater, and who has not commuted any impairment income benefits, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work.

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. Although the hearing officer does not specifically reference Rule 130.102(d)(4), his commentary and findings allude to the requirements of Rule 130.102. There was sufficient evidence to support the hearing officer's determination that the claimant had some ability to work and that the claimant had not met the requirements of Rule 130.102(d)(4) to prove a good faith effort to obtain employment commensurate with his ability to work.

Accordingly, the decision of the hearing officer decision & order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge