

APPEAL NO. 010848
FILED JUNE 4, 2001

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 27, 2001. The issue was, is the appellant (claimant) entitled to supplemental income benefits for (SIBs) the fifth quarter, from October 31, 2000, through January 29, 2001, and for the sixth quarter from January 30, 2001, through April 30, 2001? The hearing officer found that she was eligible for the sixth quarter benefits, but not the fifth quarter. The claimant appeals on the basis that during the first two weeks of the qualifying period for the fifth quarter, although she did not make any job search contacts, she should be found eligible because she did not know at that time that she had been deemed able to work at a sedentary position. There is no appeal of the hearing officer's decision regarding entitlement for the sixth quarter and the decision on that issue has become final pursuant to Section 410.169. There was no response from the respondent (carrier).

DECISION

Affirmed.

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 impairment rating (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.

It was stipulated that the claimant suffered a compensable back injury on _____. After two back surgeries, her treating doctor had not released her to work. On July 3, 2000, the claimant underwent a Functional Capacity Evaluation (FCE), which placed her in a sedentary/light work category. The claimant testified that she believed she was capable of working in a sedentary capacity in both the fifth and sixth quarter qualifying periods. However, she also testified that she did not look for employment during the first two weeks of the fifth quarter qualifying period, explaining that she did not know of the results of the FCE at that time.

Rule 130.102(e) provides in part that an injured employee "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 admits that she did not look for employment every week of the qualifying period and therefore did not comply with the requirement of 130.102(e). The evidence supports the hearing officer's decision that claimant did not comply with the requirements of Rule 130.102(e). The hearing officer's decision 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 Officers decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge