

APPEAL NO. 011111
FILED JULY 06, 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 April 30, 2001. With regard to the issues before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the third and fourth quarters, and that the claimant has permanently lost entitlement to SIBs (Section 408.146(c) states "income benefits").

The claimant appeals, contending that the treating doctor said that he had an "inability to work" because of his left knee injury. The respondent (carrier) responds, urging affirmance.

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 (IIBs) 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. The hearing officer's finding that the claimant's unemployment during the applicable quarters was a direct result of the impairment from the compensable injury has not been appealed and will not be discussed further.

The parties stipulated that the claimant sustained a compensable (left knee) injury on _____, with a 15% or greater IR; that IIBs were not commuted; and that the qualifying period for the third quarter began on May 19, 1999, with the end of the fourth quarter qualifying period ending on November 16, 1999. The claimant returned to his regular employment in November 1998 and took retirement on May 28, 1999 (nine days after the beginning of the third quarter qualifying period) because he was no longer able to perform his preinjury employment. The claimant testified that he could have performed light duty but that the employer, contrary to a union contract, refused to give him light-duty employment. Although the claimant testified that he looked for light-duty work after his retirement, those efforts were not documented and it is even uncertain if they were during the qualifying periods at issue here. The claimant proceeds on the basis that he has a total inability to work (even though he testified that he could perform light duties).

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.

Although the claimant's doctor makes two brief references that the claimant "has been unable to work," is "not expected to become gainfully employed," and is "extremely limited" on what he can do, the hearing officer found that the claimant "had some ability to work," and commented that the doctor's reports "do not constitute a narrative explaining that Claimant was not able to perform any work in any capacity" and that there were other records that the claimant "had some ability to work."

The hearing officer's decision is supported by the evidence and 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge