

APPEAL NO. 011640
FILED AUGUST 29, 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 May 1, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the second quarter.

The claimant appealed contending that his former attorney failed to explain the requirements of SIBs to him and explaining some of his testimony. The respondent (carrier) responded, 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 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. The hearing officer's finding that the claimant's unemployment during the applicable quarter was a direct result of the compensable impairment has not been appealed and will not be addressed further.

The claimant contends that he has met the good faith effort requirement by his total inability 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.

There are several medical reports in evidence and although the doctors all agree that the claimant cannot return to his preinjury job of moving office furniture because of a knee injury, none of the reports contain a narrative which explains how the injury causes a total inability to work at any task. The claimant's treating doctor only states that the claimant "is still unable to perform his work duties as a result of his knee symptoms." The carrier's doctor states that the claimant is capable of employment at the medium duty level. The hearing officer in her discussion comments:

Based on the medical report of [Dr. F] and the Claimant's own testimony, the Claimant was unable to establish that he made a good faith effort seek

employment commensurate with his ability to work based on a total inability to work as he failed to meet criteria 1 and 3 of Rule 130.130(d)(4). The report of [Dr. M] dated 2/23/01 also supports that the claimant had an ability to work during the qualifying period in that the evidence did not reveal that there was any change in the claimant's condition from 9/00 through 3/01 during which time [Dr. M] found the Claimant able to work.

The claimant contends that his former attorney failed to explain that he "still had to go and look for work." That may or may not be so, however, the Appeals Panel has frequently held that ignorance of the law is not an excuse for noncompliance with it. Texas Workers' Compensation Commission Appeal No. 971209 decided August 11, 1997. The hearing officer's commentary that the claimant's testimony regarding his normal daily activities also shows that the claimant has some ability to work is supported by the evidence.

The hearing officer, as the sole judge of the weight and credibility of the evidence, weighed the testimony and documentary evidence and her determinations on the issue before her are 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:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge