

APPEAL NO. 012098  
FILED OCTOBER 17, 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 August 8, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the second compensable quarter because he did not make a good faith attempt to look for employment commensurate with his ability during the qualifying period.

The claimant appealed, contending that he had a total inability to work pursuant to his doctor's warnings that his working could cause him permanent damage to his back. In its response, the respondent (carrier) argues that the hearing officer should be affirmed because there are numerous medical records showing that the claimant had an ability to work.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable (low back) injury on \_\_\_\_\_; that the claimant has an impairment rating (IR) of 17%; that impairment income benefits (IIBs) have not been commuted; and that the qualifying period for the second quarter began on December 2, 2000, and ended on March 2, 2001. The claimant has had one surgery, is currently going through the spinal surgery second opinion process for a second surgery, and proceeds under a total inability to work theory.

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 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 determination that the claimant's unemployment ("has not returned to work") was a direct result of his impairment has not been appealed and will not be discussed further.

The criterion in dispute is whether the claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period. Section 408.142(a)(4); Rule 130.102(b)(2). The claimant contends that he had no ability to work during the qualifying period.

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.

The hearing officer referred to the fact that there were no medical narratives from the claimant's doctor that specifically explain how the claimant's injury causes a total inability to work. The hearing officer also commented that there are several other medical records in evidence which indicate that the claimant was able to return to work with restrictions.

The hearing officer determined that the claimant had not shown an entitlement to SIBs. The hearing officer's determinations are supported by the evidence and 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.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION INSURANCE FUND (effective September 1, 2001, the true corporate name of the insurance carrier is TEXAS MUTUAL INSURANCE COMPANY)** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6<sup>TH</sup> STREET  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Michael B. McShane  
Appeals Judge