

APPEAL NO. 023125
FILED JANUARY 10, 2003

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 November 13, 2002. The hearing officer determined that the appellant (claimant) was not totally unable to work and because he had not sought employment, was not entitled to supplemental income benefits (SIBs) for the fifth quarter. The claimant appeals and argues that he presented his doctor's narrative proving complete inability; the respondent (carrier) seeks affirmance.

DECISION

We affirm the hearing officer's decision.

The qualifying period for the fifth quarter ran from April 10 through July 9, 2002. The claimant's treating doctor asserted that he could not return to his preinjury work, that he was totally disabled, and that a functional capacity evaluation (FCE) showed he could not perform significant work activities. However, the June 2002, FCE concluded that the claimant's abilities were within the sedentary level of work.

There are two eligibility criteria that must be met to continue after the first quarter to qualify for SIBs, set out in Section 408.143(a). The injured employee must prove that he or she has earned less than eighty percent of the employee's average weekly wage as a direct result of the employee's impairment and has in good faith sought employment commensurate with the employee's ability to work. The requirement to seek employment commensurate with the ability to work does not require a search for full-time employment in all cases nor does it require a return to the preinjury employment.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) defines good faith as follows:

Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

- (4) 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....

In this case, the hearing officer's determination is supported by the record. We therefore affirm his decision and order.

The true corporate name of the insurance carrier is **HIGHLAND INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CHARLIE MILLER
10370 RICHMOND AVENUE
HOUSTON, TEXAS 77042.**

Susan M. Kelley
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Edward Vilano
Appeals Judge