APPEAL NO. 000215

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 16, 1999, a hearing was held. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBS) for the eighth and ninth compensable quarters, which began on July 3, 1999, and October 2, 1999, respectively; he also determined that appellant (carrier) was not relieved of any liability because of claimant's late filing of her application for SIBS for the eighth quarter. Carrier asserts that claimant made a "voluntary election" to attend school and cites Texas Workers' Compensation Commission Appeal No. 960999, decided July 10, 1996; it also states that attending school does not remove the requirement to look for work; finally, it says that claimant did not file her application for SIBS until after the beginning of the eighth quarter and should not be paid for that time. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). The record indicates that she had a back condition prior to her compensable injury of _____. Since then she has had four surgeries, including a fusion at L4-S-1; one surgery was in response to infection.

The qualifying period for the eighth quarter began in early April 1999. The new, 1999 SIBS rules apply. On July 14, 1999, at the beginning of the qualifying period for the ninth quarter, Dr. M described claimant's "significant weakness" in her left leg, her loss of sensation and reflex in that leg, and her "significant limp." In early September 1999, within the qualifying period of the ninth quarter, Dr. M referred to claimant having fallen because of weakness in the leg. Dr. M in April 1999, during the qualifying period of the eighth quarter, had said that claimant "recently" had surgery to remove hardware and should be referred for education to increase her skills through the Texas Rehabilitation Commission (TRC). In October 1999, Dr. M said that claimant needed more education so she would not have to work in jobs that require "mostly standing, walking, lifting, carrying, stooping and bending."

Claimant at the time of the injury in _____ had an associate's degree in business. She was an assistant manager of a store. This entailed stocking, rearranging displays, and doing whatever was required. In February 1999, she was examined by a designated doctor who assigned an impairment rating of 20%. Then in March 1999, just before the beginning of the qualifying period for the eighth quarter, claimant received a letter from the Texas Workers' Compensation Commission (Commission) stating that she might receive help from TRC; she informed the Commission that on the advice of her doctor, she had already approached TRC and was sponsored in one of their programs.

Claimant testified that she is due to finish her education in May 2000. The record indicates that she received credit for over 20 courses, previously completed, toward her TRC program. Documents from TRC indicate that claimant had participated satisfactorily in its program. Ms. C testified that she works for TRC. She said that claimant was eligible for training. She added that claimant's associate's degree provides a background for jobs as a "working manager" which requires significant lifting and physical effort that is beyond claimant's ability. Claimant testified that she will graduate in May 2000 with an accounting degree from UT Arlington and has already begun the interview process for an accounting job at that time.

Carrier states that claimant made a voluntary election to go to school. The record shows that claimant's physician recommended that she do so based on the limitations resulting from her injury. In addition, while the Appeals Panel has provided some guidance in the past concerning TRC training, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)) now specifically addresses what constitutes a good faith effort to find work in regard to the TRC; it says that a good faith effort has been made when the employee:

> has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission during the qualifying period.

There was no dispute that claimant was a full-time student during both of the qualifying periods in issue. As stated in Texas Workers' Compensation Commission Appeal No. 992483, decided December 20, 1999, (citing Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999)), the Appeals Panel will not expand the rule as written--in Appeal No. 992483 the claimant, unsuccessfully, sought application of the rule even though he was not sponsored by TRC in his current education endeavor. Similarly, we will not expand the rule, as it is stated, to include that a claimant must also seek work while a full-time student in a TRC-sponsored program. The rule, as written, says nothing about a requirement to seek work while so participating. The rule, as written, neither includes nor excludes college programs in its language and does not state that a particular degree of inability to work must be present in order to be sponsored by TRC. The rule became effective in January 1999. Prior to that time the Appeals Panel had addressed questions regarding TRC programs, with the following cases providing some guidance.

Texas Workers' Compensation Commission Appeal No. 931019, decided December 17, 1993, affirmed entitlement to SIBS based on "college level study" under one of the TRC programs. The case cited by carrier, Appeal No. 960999, *supra*, then considered a claimant who was injured, but was able to return to work for his employer and worked for over a year when he quit work to "go back to school" as a full-time student in a university but with a part-time job. The opinion in Appeal No. 960999 pointed out that this case was different from a situation in which the claimant was referred by TRC; within the paragraph that pointed to that controlling difference, there was added dicta which said "SIBS is not intended to be a degree program"; the opinion then found that the claimant involved did not

meet the "direct result" test. Carrier also cited Texas Workers' Compensation Commission Appeal No. 961476, decided September 11, 1996. While that case involved a "four year program" of education under TRC, "no documents" were provided from the school or TRC. The Appeals Panel's opinion found no medical support for an inability to work, adding that being in school does not automatically remove the job search requirement. (The new, 1999 SIBS rules were not in effect at that time.) Thereafter, Texas Workers' Compensation Commission Appeal No. 961578, decided September 20, 1996, approved SIBS for a claimant to obtain an associate's degree under TRC sponsorship. Texas Workers' Compensation Commission Appeal No. 981130, decided June 26, 1998, remanded a case, in which the hearing officer had found no entitlement to SIBS, primarily to consider the evidence which indicated that that claimant was not in a degree program, but it also pointed out that Appeal No. 960999, *supra*, had distinguished itself from cases in which there was TRC sponsorship. Both Appeal No. 981130*, supra*, and Texas Workers' Compensation Commission Appeal No. 981804, decided September 14, 1998, were written in the time period of the implementation of the new, 1999 SIBS rules. Appeal No. 981804 dealt with a claimant seeking an LVN degree under TRC sponsorship. That case cautioned against "elevating a dicta observation" (the statement that SIBS is not a degree program) to the level of a doctrine. That opinion observed that in the LVN case there was no "long range degree program with no specific focus or objective employment."

While there are many Appeals Panel cases that consider SIBS not to be a "degree program," the above cases indicate that at the time of the adoption of the new, 1999 rules, the Appeals Panel "case law" was not so clear concerning "degree programs" and whether they even applied when there was TRC sponsorship, as to preclude any need for the new, 1999 rules to address that issue.

In the case under review, the applicable SIBS rules do not require reversal of the determination that a claimant who returned to college under TRC sponsorship, who was informed of this possibility (TRC assistance) by the Commission prior to the qualifying periods in question, whose education under TRC sponsorship could reasonably be considered not to be a "long range degree program with no specific focus . . ." (based on both her past college credits which shortened the length of time involved and her focus on accounting as a job skill), and who participated satisfactorily as a full-time student during both qualifying periods, is entitled to SIBS for the eighth and ninth quarters.

The record reflects that the claimant was entitled to SIBS for the seventh compensable quarter. The hearing officer found that she did not receive the TWCC-52 form from the carrier until August 13, 1999, and then filed it that same day. This finding was not appealed. With claimant entitled to SIBS for the seventh quarter, the provisions of Rule 130.104 apply; claimant is not penalized for the failure of the carrier to timely provide the form to claimant for filing the application for the succeeding quarter.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge