

APPEAL NO. 001053

This appeal after remand arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* On January 18, 2000, and January 31, 2000, a hearing was held. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first compensable quarter. Appellant self-insured ("carrier" or "employer" herein, as appropriate) appealed, asserting that: (1) it was error to find that claimant's impairment rating (IR) is 18%; (2) it did not stipulate to the IR; (3) there is no evidence that claimant was a full-time student; and (4) the good faith determination in claimant's favor was in error because it was based in part on Texas Rehabilitation Commission (TRC)-sponsored student status and claimant did not look for work each week of the qualifying period. Claimant did not respond to that appeal. The Appeals Panel reversed and remanded the case, noting that: (1) the decision and order included an alleged stipulation that the IR was 18% when there was no such stipulation; (2) there was no finding of fact addressing the IR; and (3) because the IR had not been determined, the basic requirements of Section 408.142 had not been met, and a determination as to SIBs could not be made. Texas Workers' Compensation Commission Appeal No. 000441, decided April 13, 2000. The hearing officer did not hold a hearing on remand. In a decision after remand, the hearing officer determined that: (1) claimant's IR is 18%; and (2) claimant met the SIBs good faith and direct result requirements and is entitled to first quarter SIBs. Carrier again appealed, contending that: (1) the issue of claimant's IR is not final because it has been appealed to the district court; (2) claimant did not meet the good faith SIBs requirement; and (3) claimant's unemployment during the qualifying period was due to his inadequate job search and was not a direct result of his impairment. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends that the issue of claimant's IR is not final and objects to the determination that the IR is 18%. We do not have jurisdiction over the IR issue because it has been appealed to the district court. However, the determination regarding the IR issue is binding during the pendency of the appeal to the district court.

Carrier contends that the hearing officer erred in determining that claimant met the good faith SIBs requirements. Carrier asserts that: (1) claimant was not a full-time student because he took only 9 hours during the qualifying period; (2) claimant did not look for work every week of the qualifying period; (3) the job search claimant did make was not in good faith because of the type of jobs claimant sought; (4) claimant was not enrolled in a TRC-approved program "attending classes on a full-time basis"; and (5) claimant does not need to be retrained because he already qualifies for security-guard work due to his law-enforcement background.

The background facts were stated in our prior decision. Briefly, claimant testified that he worked for employer in the sheriff's department and that his ankle, knee, shoulder and back were treated after his compensable injury. Claimant said he underwent knee replacement surgery after his injury. The parties stipulated that the first compensable quarter began on October 9, 1999.

Regarding whether claimant looked for work every week of the qualifying period that he was not actively attending school, Rule 130.102(d) and (e) specify how a claimant may meet the good faith effort requirement of the 1989 Act. If an injured employee meets the good faith requirements of one of those subsections then the employee has satisfied the good faith requirement and does not have to meet the requirement of another subsection. In this case, claimant met the requirement of Rule 130.102(d)(2) because the hearing officer found he was enrolled and satisfactorily participating in a full-time vocational rehabilitation program sponsored by the TRC. As we noted in Texas Workers' Compensation Commission Appeal No. 000677, decided May 17, 2000, comments on the proposed Rule 130.102(d)(2) were to the effect that the concept was that it "precludes an insurance carrier from requiring an injured employee to participate in a vocational rehabilitation program provided by TRC . . . and then expect the injured employee to continue to seek employment commensurate with the injured employee's ability over and above the rehabilitation plan requirements." 24 Tex. Reg. 10339 at 10343. We conclude that the hearing officer did not err in determining that claimant met the good faith SIBs requirements even though he did not look for work each week of the filing period.

Regarding whether claimant's participation in the TRC-approved program was "full-time," we note that the term "full time participation in a vocational rehabilitation program" was not defined by Texas Workers' Compensation Commission rule at the time of the qualifying period in this case. However, the preamble to the SIBs rules effective January 31, 1999, states that this issue is to be considered on a case-by-case basis. A TRC employee testified that claimant received TRC counseling, that he was a compliant client of the TRC during the qualifying period, that he was enrolled in school to retrain, that he qualified for TRC counseling because of his disability, and that TRC sometimes paid for his books. Claimant said he is attending college to retrain to be a human resources manager. He testified that the Veterans Administration pays for his classes and the TRC agreed to pay for his books. Claimant said he did not qualify to have the TRC pay for his college courses because of the amount of his family's earnings. Claimant said he took nine hours of classes during the qualifying period and that he sometimes spent 12 hours per week in the tutoring room obtaining help with his math homework. Claimant said he limited his classes because he wanted to make sure he could handle the class work.

The hearing officer heard the evidence and made his determinations regarding good faith and claimant's participation in a TRC vocational rehabilitation program. As an appeals level body, we do not find facts, pass upon credibility, or substitute our judgment for that of the hearing officer. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer could consider the testimony regarding claimant's participation in making his determinations in this regard. This involves

a fact issue for the hearing officer. Texas Workers' Compensation Commission Appeal No. 992819, decided January 28, 2000. Regarding whether claimant requires retraining since he already qualifies for certain jobs, this is apparently not a criterion for participation in TRC-sponsored rehabilitation counseling or retraining. The hearing officer's determinations regarding good faith and claimant's participation in the TRC rehabilitation program are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Carrier contends the hearing officer erred in determining that claimant's unemployment is a direct result of his impairment. Carrier asserts that the reason claimant was unemployed was because he did not make an adequate job search. There is medical evidence dated prior to the date of the qualifying period that states that claimant is disabled from his prior work. The hearing officer's direct result determination is supported by evidence that claimant sustained a serious injury with lasting effects and that, during the qualifying period, he could not reasonably perform the type of sheriff's office work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 93559, decided August 20, 1993; Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge