

APPEAL NO. 001369

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 April 24, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 10th and 11th quarters. He found that she satisfied the good faith search for employment requirement by virtue of being enrolled in a full-time Texas Rehabilitation Commission (TRC)-sponsored program.

The appellant (carrier) appeals, arguing that the educational program in which the claimant is enrolled is not a TRC-sponsored program because it is only "partially subsidized" by the TRC. The carrier argues that Tex. W.C. Comm-n, 28 TEX. ADMIN. CODE ' 130.102(d) (Rule 130.102(d)) therefore does not apply to this case. The carrier argues that neither the 1989 Act nor the rules provide a blanket excuse from searching for work during semester breaks. The claimant responds that the TRC would have paid for her education in full but for the fact that she qualified for other grants and that her course of study is nevertheless sponsored by the TRC. The claimant asks that the decision be affirmed as was a similar case for her two earlier quarters.

DECISION

We affirm the hearing officer's decision.

The claimant injured her back on _____, and had surgery. She had been employed as an assistant manager by (employer). She could not return to the demands of this employment.

The periods in question ran from September 19, 1999, through March 17, 2000. The claimant said that she had been seeking employment through placement services at the college and had been granted interviews, beginning the previous summer, contingent upon graduation. She did not seek employment during the Christmas break between semesters. She testified as to her degree directions and objectives, which were preparing her for accounting. The claimant previously had an associate=s degree from a junior college.

She said that she was required by TRC regulations to apply for financial aid and if awarded financial aid, the TRC would pay the balance. She said that the TRC paid for her books, gas mileage, and any tuition and fees not otherwise covered by her financial aid. She had been referred to the TRC initially by her treating doctor and then by the Texas Workers' Compensation Commission (Commission) in March 1999. She was enrolled full time in college, to graduate May 14, 2000.

Her TRC counselor, Ms. C, testified and said she was the vocational rehabilitation counselor assigned to the claimant's case. She verified that the degree program in which the claimant was enrolled was sponsored by the TRC and was full time. Ms. C said that the TRC

determined that claimant needed additional schooling to bolster her associate=s degree to ensure she could obtain employment not involving lifting or the use of her back. On cross-examination, Ms. C testified that she had slightly in excess of 100 clients, some of whom were studying for bachelor's degrees or even higher degrees. She could not guess without reviewing her records what the percentage was. She indicated that about half of her clients were going through retraining, as opposed to medical restoration such as work hardening.

Ms. C agreed that the claimant was not completely unable to obtain employment with an associate=s degree but only that she would be more marketable with a bachelor's degree. Ms. C said that the role of Career Assessment Services (a private vocational services agency) was to review the claimant's abilities in order to assess what jobs she could perform and it was the TRC's role to determine if retraining would be required. Ms. C said that in order to earn a living wage, the claimant required retraining. Ms. C noted that the claimant did not have clerical or computer skills. Ms. C said that TRC-sponsored trainees were not required to seek employment in between semesters in a course of study.

The private vocational services agency noted that the claimant was restricted to the sedentary level as far as lifting, bending, and twisting. The report noted that the claimant's intellectual functioning was above average. Some job positions were cited that met her current capabilities and educational level. Her aptitudes were evaluated as well.

The authority cited by the carrier precedes the effective date of Rule 130.102(d)(2) and, therefore, no longer applies. The Commission has determined that study in a full-time TRC-sponsored program satisfies the "good faith effort" provision of SIBs entitlement. As the Appeals Panel stated in the case upholding an award of SIBs for the claimant previously, in Texas Workers' Compensation Commission Appeal No. 000215, decided March 13, 2000:

There was no dispute that the 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.

As that case goes on to discuss, it was not even settled law prior to the rule change that the claimant would not have been able to be found entitled to SIBs under these same facts.

We cannot agree that the hearing officer's determination that the claimant was preponderance of the evidence and we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Gary L. Kilgore
Appeals Judge