

APPEAL NO. 001895

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 July 19, 2000. With regard to the issues before him, the hearing officer determined that the respondent (claimant) was enrolled in and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) and entitled to supplemental income benefits (SIBs) for the fourth and fifth compensable quarters. The hearing officer also determined that the appellant (carrier) had not waived the right to contest the claimant's entitlement to SIBs for the fourth quarter.

The carrier appealed, contending that the claimant's enrollment was not "full time" and that the claimant had "numerous hours available each week" where he should have been seeking employment, and citing cases which stated that SIBs "were not intended to be a degree program." The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant, in a timely response, urges affirmance of the hearing officer's decision on the fourth and fifth quarters of SIBs and "seeks Appellant review" of the hearing officer's decision that the carrier had not timely contested the claimant's entitlement to SIBs for the fourth quarter. The claimant's response is timely as a response but is not timely as an appeal. See Section 410.202 for timely filing times. The hearing officer's decision on the waiver issue, having not been timely filed, has become final and will not be addressed further. See Section 410.169.

DECISION

Affirmed.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the impairment income benefits (IIBs) period expires if the employee has: (1) an impairment rating of at least 15%; (2) not returned to work or has earned less than 80% of the employees average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. At issue in this case is subsection (4), whether the claimant made the requisite good faith effort to obtain employment commensurate with his ability to work and whether the claimant's unemployment is a direct result of his impairment.

The carrier in its "Scope of Appeal" section requests appellate review of Finding of Fact No. 4, that the claimant's unemployment "was a direct result of the impairment from his compensable injury" and in the next section "Argument and Authorities" states that the "Carrier had not challenged the Claimant's entitlement to SIBs on the grounds of the 'direct result' criterion and therefore the parties did not develop evidence in this regard." Since the direct result criterion is a statutory element found in Sections 408.142(a)(2) and 408.143(a)(1), we not only find no error in the hearing officer's finding on this element, regardless of whether the carrier chose to present evidence on it, but commend the hearing officer for establishing that element.

The background facts were fully discussed in Texas Workers' Compensation Commission Appeal No. 000677, decided May 17, 2000, which involved this same claimant and where we affirmed the hearing officer's decision on entitlement to SIBs for the third quarter. The claimant has a back injury and was accepted into the TRC's vocational rehabilitation program to become a radiology technician. In the third quarter, the claimant was taking seven credit hours plus laboratories. In this case, for the fourth quarter, the claimant was again taking seven credit hours in the prescribed TRC course plus "clinical" (where the claimant worked with a registered radiology technician); and for the fifth quarter, the claimant was taking the prescribed 11 credit hours plus clinicals. The claimant testified and the college transcript supported that the claimant made three A's and one B in each of the semesters for which he has grades.

The claimant relies on Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)), where a good faith effort has been established if the claimant:

- (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period[.]

As discussed in Appeal No. 000677, *supra*, Rule 130.101(8) defines a "full time vocational rehabilitation program." We affirm the hearing officer's decision in this case for the same reasons and the same basis as Appeal No. 000677.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Susan M. Kelley
Appeals Judge