

APPEAL NO. 002010

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 31, 2000. The issue at the CCH was the appellant's (claimant's) entitlement to supplemental income benefits (SIBs) for the 11th quarter. The hearing officer found that the claimant was not enrolled in a full time rehabilitation program and was not entitled to the 11th quarter of SIBs. The claimant appealed the hearing officer's decision. The respondent (carrier) responds that the hearing officer's decision is correct and requests that it be affirmed.

DECISION

Reversed and rendered.

The facts of the case at hand were largely undisputed. The claimant sustained a compensable injury while working for (employer) when she picked up an unexpectedly heavy box of parts. The claimant has an impairment rating of more than 15% and did not commute any part of the impairment income benefits. The hearing officer found that the claimant's unemployment during the qualifying period for the 11th quarter was a direct result of her impairment and that finding has not been appealed. Although not set out in the hearing officer's decision and order, the parties agreed at the hearing that the benefit period for the 11th quarter of SIBs was from March 30, 2000, through June 28, 2000. The qualifying period was, therefore, from December 17, 1999, through March 16, 2000.

It was undisputed that the claimant is a client of the Texas Rehabilitation Commission (TRC) and has been undertaking vocational training through that agency. During the qualifying period, the claimant continued in the TRC program, but was unable to take several classes because they were canceled at the last minute, and rescheduled for a later date. The hearing officer found that the claimant was not satisfactorily participating in a full time vocational rehabilitation program sponsored by the TRC during the qualifying period. The hearing officer also found that the claimant had not made a good faith effort to seek employment commensurate with her ability to work but, since the dispute between the parties centered around the claimant's enrollment status in an adult education program sponsored by the TRC and there was no job search undertaken by the claimant during the qualifying period, that finding is predicated on his finding regarding the TRC program.

Rule 130.102(d)(2) states that an injured worker has made a good faith effort to seek employment commensurate with his or her ability to work if the injured worker has been "... enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period". A full time vocational rehabilitation program is defined in Rule 130.101(8) as:

(8) Full time vocational rehabilitation program. Any program, provided by the [TRC] or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services, for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan includes, at a minimum, an employment goal, an intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

As noted in Texas Workers' Compensation Commission Appeal No. 000677 decided May 17, 2000, comments to the proposed Rule 130.102(d)(2) noted that the concept of the rule was to allow an injured worker to participate in a vocation rehabilitation program without having to continue to seek employment over and above the rehabilitation program's requirements. Rule 130.101(8), which became effective on November 28, 1999, was adopted to allow participants in rehabilitation programs to determine, with some degree of accuracy, whether a particular program qualified as a "full time rehabilitation program".

In a letter dated March 17, 2000, Ms. O, a vocational rehabilitation counselor with the TRC, wrote:

[The claimant] is currently participating in a training program at (the college) through T.R.C.'s sponsorship of tuition and books in the Computer Applications Program. One condition of this sponsorship is that she participate full-time and that the completion of the training program is [the claimant's] first priority. [The claimant] was counseled to delay her employment search until after the completion of her training program. (The case manager), Field Case Manager with (the third-party administrator), was in agreement.

[The claimant] has consistently completed classes as required since 06/01/99. She registered in December, 1999 for the next planned semester; 4 classes (full-time as outlined by [the college]). Two of the classes (02/03/00-2/17/00 & 2/22/00-03/07/00) were postponed until later in the semester due to low enrollment, and notification of the cancellations were delivered the day before the classes were to begin. Delay of the commencement of these classes were out of [the claimant's] control. [The claimant's] next class is scheduled to start 03/20/00. [The claimant] is expected to complete her training program in 9 months or 12/31/00 as planned.

[The claimant] has cooperated fully with her vocational rehabilitation program, and in following Dr. P's recommendations of pursuing retraining and not returning to her previous occupation due to her restrictions.

On June 1, 2000, Ms. O wrote another letter indicating that the claimant was satisfactorily fulfilling her obligations in the TRC program. Ms. O also appeared at the hearing and testified that the claimant was a full time client of TRC and was making satisfactory progress in her rehabilitation program. Ms. O testified that the cancellation of classes, as experienced by the claimant, was a common experience and it is inferred from that testimony that such events are anticipated by TRC in establishing a vocational rehabilitation program for its clients.

The hearing officer's finding of fact that the claimant was not satisfactorily participating in a full time rehabilitation program sponsored by the TRC during the qualifying period for the 11th quarter of SIBs is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust and is reversed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)

The decision and order of the hearing officer is reversed and a new decision that the claimant is entitled to supplemental income benefits for the 11th quarter is rendered.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge