

## APPEAL NO. 002767

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 October 30, 2000. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for her fifth and sixth quarters of eligibility because she had not made a good faith search for employment during the qualifying periods for those quarters. The hearing officer found that the claimant's unemployment or underemployment was the direct result of her impairment.

The claimant has appealed, arguing that she had a complete inability to work. The claimant further points out that she was enrolled during the sixth quarter in a program under the auspices of the Texas Rehabilitation Commission (TRC) and that she furthermore accepted a job during that quarter. The respondent (carrier) responds that the evidence supports the decision. The carrier argues that because the claimant only attends class 20 hours a week, this is not a full-time program.

### DECISION

Affirmed as to the fifth quarter, reversed and rendered that the claimant is entitled to SIBs for the sixth quarter.

The claimant was injured on \_\_\_\_\_. She had bilateral carpal tunnel syndrome and developed reflex sympathetic dystrophy. The qualifying periods for the quarters in issue ran from February 17 through May 17, 2000, and from May 18 through August 17, 2000.

On November 4, 1999, the claimant was evaluated by Dr. D in a required medical examination arranged by the Texas Workers Compensation Commission specifically to evaluate her ability to return to work. Dr. D stated that he did not believe that the claimant could undertake gainful employment, and would not be able to work at even the sedentary level due to significant pain when she moved her wrists and hands. He noted that the claimant was medically unable to undergo a functional capacity evaluation (FCE) and doubted that she would be able to perform activities in such testing anyway.

However, an FCE was performed on February 24, 2000. The copy in evidence was poorly photocopied, and while it shows that the claimant was rated within the sedentary category or sedentary light category for various functional abilities, it cannot be determined what these abilities are. On February 25, 2000, the claimant had a ganglion block.

On March 28, 2000, the claimant's doctor, Dr. N, wrote that the claimant was unable to perform any work. He said she was in a work hardening program that would last four to six weeks and would be able to hopefully perform light to moderate work at that time.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) defines good faith as follows:

- (d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
  - (1) has returned to work in a position which is relatively equal to the injured employee's ability to work;
  - (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission during the qualifying period;
  - (3) has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;
  - (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or
  - (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

Because the claimant did not look for work because she said she had no ability to work and was not enrolled in any TRC-sponsored program during the qualifying period for the fifth quarter, the applicable provision for the fifth quarter is Rule 130.102(d)(4). The record developed herein supports the hearing officer's implied findings that, for the fifth quarter, the claimant did not meet the requirements set out in this rule. The FCE could be interpreted as a record showing an ability to work. We therefore affirm the determination that the claimant was not entitled to SIBs for her fifth quarter.

#### **Participation in TRC sponsored program for Sixth Quarter**

It was undisputed that the claimant began schooling through a TRC-sponsored retraining program on June 13, 2000. The record includes documentation from the TRC showing that she began the evaluation and application process with TRC before she began class. Pertinent to this decision is that the record also contains her signed plan with the TRC, dated May 25, 2000, which includes enrollment in a program for medical assistance

training through the (Institute) to begin June 13, 2000, and continue through March 30, 2001. The claimant presented transcripts and attendance from the Institute to show that she is satisfactorily completing and participating in the training modules offered by the Institute. The plan in question spells out the goals, a description of services to be provided, the beginning and ending times of specified training, and what the claimant's responsibilities are.

The claimant attended class five days a week from 10:00 a.m. until 2:00 p.m., and had additional labs and study requirements. The claimant also obtained a part-time job during this qualifying period.

Rule 130.101(8), effective November 28, 1999, defines what is meant by a full-time vocational rehabilitation program:

Any program, provided by the [TRC] or a private provider . . . , 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, any 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. 000001, decided February 16, 2000, the preamble to the rule states that any program provided by the TRC should be considered a full-time program. And Texas Workers' Compensation Commission Appeal No. 000677, decided May 17, 2000, stated that this rule superceded previous Appeals Panel decisions that stressed the number of hours spent in class each week. In Texas Workers' Compensation Commission Appeal No. 001563, decided August 14, 2000, we made clear that enrollment in a "full-time" vocational rehabilitation program under the auspices of the TRC did not have to encompass the entire period to be considered participation "during" the qualifying period, for purposes of Rule 130.102(d)(2). The carrier's argument that the program is not full-time due to only 20 hours course work a week has no basis in Rule 130.101(8) and was specifically rejected in Texas Workers' Compensation Commission Appeal No. 000677, *supra*.

Although the hearing officer does not appear to have applied the applicable rules to the TRC-sponsored program that she found as fact was undertaken by the claimant, we need not remand because all elements of a full-time program, and satisfactory participation therein, are included in the record with no conflicting evidence except for the carrier's class time hours argument. We therefore render the decision that the claimant satisfied the requirements of making a good faith search for employment under Rule 130.102(d)(2) and is therefore entitled to SIBs for the sixth quarter.

We affirm the decision and order for the fifth quarter, and reverse the decision that the claimant is not entitled to SIBs for her sixth quarter of eligibility. We render a decision that the claimant is entitled to SIBs for the sixth quarter, and order that such benefits be paid with applicable interest.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge