

APPEAL NO. 010119

This appeal arises pursuant to the Texas Workers' Compensation Commission Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 13, 2000. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 14th quarter. The appellant (carrier) appealed contending that the claimant had some ability to work and that the claimant did not qualify as a full-time student pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2)(Rule 130.102(d)(2)). The claimant responds arguing affirmance.

DECISION

Reversed and a new decision rendered.

The parties stipulated that the claimant sustained a compensable injury ("carrier accepted liability") on _____; that the claimant has an impairment rating of 15% or greater; and that impairment income benefits were not commuted. Although there was no stipulation as to the qualifying period the parties appear to accept that it was from April 24 through July 23, 2000. It was unclear from either the record before us or the hearing officer's decision what the claimant's theory of entitlement is, as the claimant argues that he has both a total inability to work and that he attended school for a portion of the qualifying period under Texas Rehabilitation Commission (TRC) auspices.

Eligibility criteria for SIBs entitlement are set forth in section 408.142(a) and Rule 130.102. The hearing officer's determination that the claimant's unemployment was a direct result of his impairment (Rule 130.102(c)) has not been appealed and will not be addressed further.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee 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. The hearing officer, in a confusing Finding of Fact No. 5, found that the claimant was capable of performing sedentary to light duty work; that Dr. S narrative reports "do not establish . . . a total inability to work in any capacity" and that Dr. D's reports state "that claimant is capable of working in at least a sedentary to light duty capacity." The hearing officer concludes, in Finding of Fact No. 5, that the claimant did not make "good faith efforts to seek employment commensurate with his ability to work. . . ." We are satisfied that those findings are supported by the evidence and that consequently the claimant has not met the requirements of Rule 130.102(d)(4).

The good faith requirement of SIBs may also be met by Rule 130.102(d)(2) which provides that 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 Texas Rehabilitation Commission during the qualifying period[.]

The claimant's testimony and documentary evidence establishes that the claimant was enrolled in some kind of TRC educational program but that the spring semester ended on May 14, 2000. The claimant testified that he did not attend any summer sessions apparently relying on Dr S's report of a total inability to work. While we are not persuaded by the carrier's argument that attending classes eight hours a week cannot be considered full time, in evidence is the claimant's enrollment verification from the community college that he was attending showing that he was enrolled "half time" during "spring 2000." This form and a "grade report" showing claimant received an "A" in "Intro. Computer Maintenance" and a "B" in "DC-AC Circuit" are the only documents offered to show compliance of participating in a full-time vocational rehabilitation program. Rule 130.101(8) which defines the minimum requirements of a what a full-time vocational program sponsored by the TRC must include requires a vocational rehabilitation plan, an employment goal, any intermediate goals, a description of the services provided, the start and end dates of the described services and the claimant's responsibilities for the successful completion of the plan. Clearly, the evidence does not support that the claimant has met the requirements of Rule 130.102(d)(2) and Rule 130.101(8).

Frankly, we are unable to determine the basis for the hearing officer's conclusion that the claimant "meets all four eligibility criteria and is entitled to SIBs for the 14th quarter." We reverse the hearing officer's decision and render a new decision that the claimant is not entitled to SIBs for the 14th quarter.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge