

## APPEAL NO. 010497-S

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on February 1, 2001. The hearing officer resolved the sole disputed issue by concluding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter. The appellant (carrier) disputes the sufficiency of the evidence to support this conclusion and several related factual findings, contending that the claimant's pursuit of a college degree during part of the qualifying period for the second quarter did not qualify under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)), which was the basis for the hearing officer's finding that the claimant met the "good faith attempt" to obtain employment requirement of Sections 408.142 and 408.143. The claimant's response urges the sufficiency of the evidence to support an affirmance. Not appealed is the hearing officer's finding that the claimant's unemployment during the qualifying period was a result of her impairment from the compensable injury.

### DECISION

Reversed and a new decision rendered that the claimant is not entitled to SIBs for the second quarter.

The parties stipulated that the qualifying period for the quarter at issue began on April 15, 2000, and ended on July 13, 2000. The claimant testified that prior to her work-related injury, bilateral carpal tunnel syndrome (CTS), she worked for the (employer 1) as a consumer affairs representative, taking phone calls and entering data; and that following her CTS injury of \_\_\_\_\_, she underwent one operation on her right wrist and two on her left. The medical evidence indicates that she did not regain full use of her left hand. The claimant further stated that following her injury she obtained funding from the Texas Rehabilitation Commission (TRC) and, in 1998, obtained a degree in culinary arts. She indicated, however, that she could not pursue employment in this field because of her CTS injury. The claimant said that since she had 90 college credit hours she decided to finish a Bachelor of Science degree program at the (university) and pursue a career as a teacher. Her documentary evidence includes a January 3, 2000, letter reflecting that she was accepted into the Alternative Certification Program (ACP) in the area of Secondary English and that she could begin interviewing with the local school districts for a teaching position for the fall 2000 semester. A list of school districts and ACP district liaisons was enclosed. An April 12, 2000, letter states that the claimant's acceptance into the ACP program was conditioned upon her completion of her course work already in progress and providing a transcript prior to beginning pre-assignment training on June 2, 2000. This letter also stated that she could begin interviewing with school districts for the fall 2000 semester.

The claimant's documentary evidence and her testimony indicate that by May 24, 2000, she had completed her degree requirements as well as 30 hours of classroom teacher observations. She said that on May 24, 2000, she began looking for a teaching position with various independent school districts and ultimately was hired as a teacher by

the (employer 2). The claimant's Application for [SIBs] (TWCC-52) reflects that between May 24 and July 6, 2000, she contacted 13 independent school districts or schools. She testified that she had no earnings in the qualifying period; that she did not look for employment, generally, before May 24, 2000, because she was "still in school"; and that she could not look for employment as a teacher until she obtained her degree.

Concerning the TRC, the claimant testified that although she had exhausted her TRC funding pursuing retraining in the culinary arts, she nonetheless kept the TRC informed of her pursuit of a college degree and teaching certificate, including sending the TRC a transcript of her grades. While acknowledging that the TRC was not providing funding for her college degree program, she stated that the TRC was "responsible" for her attending the university and "monitored" and "was aware of" her progress. The claimant introduced an October 13, 2000, letter to the Texas Workers' Compensation Commission from Ms. J, a TRC counselor, stating that the claimant has "been working with" Ms. J since April 1997; that the claimant "has been involved and participated in a full time vocational rehabilitation training program to obtain and maintain a suitable employment outcome"; that the TRC "has assisted this individual with resources necessary to obtain a marketable skill"; and that the claimant "has shown a 'good faith effort' during the process."

The statutory requirements for entitlement to SIBs are set forth in Sections 408.142 and 408.143 of the 1989 Act. Concerning the "direct result" requirement, while not disputing the finding that the claimant was unable to return to her preinjury occupation or the vocation for which she was previously provided training by the TRC due to the impairment resulting from the compensable injury, the carrier does dispute the finding that the claimant's unemployment during the second quarter qualifying period was a direct result of her impairment from the compensable injury. We are satisfied that the evidence is sufficient to support the challenged finding that the claimant's unemployment during the qualifying period was a direct result of her impairment from the compensable injury. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Regarding the "good faith effort" requirement, Rule 130.102(d) 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: . . . (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program *sponsored by* the [TRC] during the qualifying period [emphasis supplied] . . . ."

The hearing officer found that "[d]uring the second quarter qualifying period, Claimant participated in a full time job training program *monitored* by the [TRC] [emphasis supplied]"; that this job-training program was not funded by the TRC as the claimant had previously exhausted all funds available to her through the TRC in another vocational rehabilitation program; and that the claimant satisfied the good faith requirement regarding her efforts to obtain employment by her enrollment and participation in the job-training program. In our view, the hearing officer has erred as a matter of law in finding that the claimant satisfied the "good faith attempt" requirement by participating in a "job training

program” which was merely being “monitored” by, but not “sponsored” by, the TRC. “Monitored” and “sponsored” are not synonymous.

We reverse the hearing officer’s determination that during the qualifying period for the second quarter the claimant made a good faith effort to obtain employment commensurate with her ability to work and render a new decision and order that the claimant is not entitled to SIBs for the second quarter.

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Philip F. O’Neill  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Michael B. McShane  
Appeals Judge