

## APPEAL NO. 010865

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 3, 2000. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 002477, decided November 29, 2000, remanded the case to the hearing officer for reconstruction of the record (inaudible tape). Following a remand hearing held on April 3, 2001, the hearing officer, (hearing officer 1), resolved the disputed issue by finding that, during the qualifying period for the 12th quarter, the respondent (claimant) was enrolled in and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) and by concluding that she is entitled to supplemental income benefits (SIBs) for the 12th quarter. The appellant (carrier) urges on appeal that the hearing officer erred in admitting into evidence hearing officer decisions and Appeals Panel decisions concerning the 8th, 9th, 10th, and 11th quarters and that the evidence is insufficient to support the hearing officer's factual findings concerning the claimant's having made a good faith attempt to obtain employment commensurate with her ability to work and her unemployment being a direct result of her impairment. The claimant's response urges the absence of error in admitting the challenged exhibits and the sufficiency of the evidence to support the challenged findings.

### DECISION

Affirmed.

The hearing officer did not abuse his discretion in admitting certain hearing officer decisions and Appeals Panel decisions into evidence. The carrier objected on relevance grounds to the admission of two hearing officer decisions which determined that the claimant satisfied the requirements for entitlement to SIBs for the 8th and 9th quarters and for the 10th and 11th quarters by being enrolled in and satisfactorily participating in a full-time TRC-sponsored program pursuant to the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)) and that she was entitled to SIBs for those quarters. Similarly, the carrier objected to the admission of Texas Workers' Compensation Commission Appeal No. 000215, decided March 13, 2000, and to Texas Workers' Compensation Commission Appeal No. 001369, decided July 28, 2000, which affirmed those hearing officer's decisions. The Appeals Panel has stated that "eligibility for each quarter of SIBs is dependent upon the facts pertinent to that quarter"; that "a ruling on a specific quarter does not guarantee benefits for every subsequent quarter"; and that a claimant who prevails for one quarter is not relieved of the obligation to meet the statutory requirements for entitlement to SIBs for future quarters. Texas Workers' Compensation Commission Appeal No. 941053, decided September 20, 1994.

Both parties discuss Rule 130.108(a) as a basis for admitting the challenged exhibits. This rule provides that neither an injured employee nor a carrier shall pursue a dispute on entitlement to SIBs without a factual or legal basis and without considering a comparison of the factual situation of the qualifying period for the previous quarter with that

of the current qualifying period. Thus, this rule can be a basis for admitting the challenged exhibits. Further, Section 410.165(a) provides, in part, that "conformity to legal rules of evidence is not necessary." The carrier has neither articulated nor demonstrated how the admission of the complained-of documents caused or probably caused the rendition of an erroneous decision in this case. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer did not err in determining that the claimant is entitled to SIBs for the 12th quarter. The testimony of the claimant and of Ms. C, the claimant's counselor from the TRC, as supplemented by the claimant's documentary evidence, sufficiently established that during the qualifying period for the 12th quarter, she was enrolled in and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC; that she attempted in good faith to obtain employment commensurate with her ability to work; and that her underemployment and unemployment was a direct result of her impairment. During the 12th quarter qualifying period, the claimant completed a full-time course of studies at a university under TRC-sponsorship, graduated with a bachelor's degree, and was hired by a bank as a teller with "career path status." Most, if not all, of the carrier's contentions have been previously addressed in our two prior decisions cited above. The challenged findings are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

---

Philip F. O'Neill  
Appeals Judge

CONCUR:

---

Susan M. Kelley  
Appeals Judge

---

Robert W. Potts  
Appeals Judge