

APPEAL NO. 010892
FILED JUNE 1, 2001

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 April 4, 2001. The hearing officer determined that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the second quarter. The hearing officer found that during the qualifying period for this quarter the claimant did not search for employment commensurate with her ability to work, did not return to work in a position relatively equal to her ability to work, and had completed a full-time vocational rehabilitation program prior to the first day of the compensable quarter. The claimant appeals, arguing that the claimant acted in good faith in that she was enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. The claimant also appeals the hearing officer's determination that the claimant's unemployment during the qualifying period was not a direct result of the impairment from her compensable injury. The respondent (carrier herein) argues that the decision of the hearing officer was sufficiently supported by the evidence.

DECISION

Reversed and a new decision is rendered that the claimant is entitled to SIBs for the second quarter.

This case hinges upon whether the claimant met the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)), which provides 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:

* * * *

- (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period.

The claimant contends that she was enrolled in and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period for the second quarter. It was undisputed that the claimant was enrolled in a TRC program to become a licensed realtor. It was also undisputed that the claimant had completed the classroom portion of her training program shortly before the beginning of the qualifying period for the second quarter. However, during the second quarter qualifying period, the claimant continued to work with a realtor to gain practical experience and to study for her real estate license examination, which the claimant passed during the

qualifying period. During the qualifying period the claimant also met with a CPA a number of times to develop a business plan for setting up a real estate business. Working with a realtor, preparing for and taking the real estate examination, and meeting with the CPA were all part of the claimant's TRC Individualized Plan for Employment (IPE). Records from the TRC indicated that the claimant was in compliance with her IPE during the qualifying period for the second quarter.

The hearing officer essentially found that the claimant's participation in a full-time TRC vocational rehabilitation program ended when the claimant completed the classroom portion of her plan prior to the beginning of the qualifying period. In doing this the hearing officer here makes the same error in interpreting Rule 130.102(d)(2) as did the hearing officer in Texas Workers' Compensation Commission Appeal No. 010483-S, decided April 20, 2001. In Appeal No. 010483-S we stated as follows in regard to what constitutes a full-time TRC vocational rehabilitation program:

In her decision, the hearing officer determined that the claimant was not involved in a full-time vocational program sponsored by the TRC. In so doing, the hearing officer focused on the activities that the claimant performed in the period from October 22, 1999, to July 20, 2000. Specifically, the hearing officer noted that the evidence did not demonstrate that the claimant "had in any way been enrolled in and participated in anything resembling a full time program." To determine what programs are to be considered full-time vocational rehabilitation programs, we have previously turned to the preamble and comments to Rule 130.102(d)(2). As we noted in Texas Workers' Compensation Commission Appeal No. 000001, decided February 16, 2000, the preamble to Rule 130.102(d)(2) states that any program provided by the TRC should be considered a full-time program. The preamble further states that "[t]his concept precludes an insurance carrier from requiring an injured employee to participate in a vocational rehabilitation program sponsored by the TRC . . . and then expect the injured employee to continue to seek employment commensurate with the injured employee's ability over and above the rehabilitation plan requirements; seeking employment may be a part of the rehabilitation program." In this instance, the evidence, and more specifically, the IPE, the TRC letter, and the claimant's testimony, clearly establish that the claimant was enrolled in a vocational rehabilitation program sponsored by the TRC and, based upon the unambiguous language in the preamble, that program was to be considered a full-time program. The hearing officer erred in determining that the claimant's program was not a full-time program, based upon her apparent disagreement with the time table set by the TRC for the claimant's progression through vocational rehabilitation.

The hearing officer in the present case appears to believe that the claimant's activities in working with the realtor without pay to obtain experience and consulting with the CPA to develop a business plan, as well as studying for and taking the real estate

license examination, were not sufficient to constitute a full-time vocational rehabilitation program. It is the province of the TRC, and not the hearing officer, to design a vocational rehabilitation program and, as we stated in the above-quoted language from Appeal No. 010483-S, *supra*, based upon the language in the preamble to Rule 130.102(d)(2) a vocational rehabilitation program designed by the TRC is a full-time program.

Also, as in Appeal No. 010483-S, there is evidence from the TRC and the claimant that the claimant satisfactorily participated in her TRC vocational rehabilitation program and there is no evidence to the contrary. Under these circumstances, and relying upon our decision in Appeal No. 010483-S, we reverse the decision of the hearing officer and render a new decision that the claimant is entitled to SIBs for the second quarter. The carrier is ordered to pay all second quarter SIBs benefits not previously paid, with interest.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge