

APPEAL NO. 011068-S  
FILED JUNE 25, 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 (CCH) was held on April 17, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fourth quarter. The claimant appealed the hearing officer's determinations on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Reversed and remanded.

The claimant has the burden to prove that he made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period. Texas Workers' Compensation Commission Appeal No. 941490, decided December 19, 1994; Sections 408.142(a)(4) and 408.143(a)(3); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102 (Rule 130.102). The claimant asserts that he made a good faith effort to find employment every week and participated in a full-time vocational rehabilitation program during the qualifying period.

Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with his ability to work, if the employee has provided sufficient documentation as described in subsection (e) of the rule to show that he has made a good faith effort to obtain employment. Rule 130.102(e) provides that an injured employee shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. We have held that the documentation requirement of Rule 130.102(e) is mandatory and undocumented employment contacts may not be considered in arriving at the good faith determination. Texas Workers' Compensation Commission Appeal No. 000505, decided April 20, 2000.

Rules 130.102(d)(1) and (4) do not apply to the circumstances of this case. Rules 130.102(d)(2) and (3)) provide that an injured employee has made a good faith effort to obtain employment commensurate with his ability to work, if the employee, during the qualifying period, enrolled in and satisfactorily participated in a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) or provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services. There is no evidence that the course taken was TRC sponsored or that the provider of the training program in which the claimant participated is included in the Registry of Private Providers of Vocational Rehabilitation Services.

The hearing officer, in her Statement of the Evidence and Discussion, refers to the claimant's participation in a truck driving class from December 4 through December 28, 2000. The claimant testified as to his participation in classroom work and to his actual

driving of a truck. He provided exhibits which confirm his perfect attendance at the class and his successful completion of the class. The claimant's Application for [SIBs] (TWCC-52) reflects that he documented an employment search covering the four weeks of attendance at the truck driving class by showing that he contacted a person in (city), and applied for "class truck driver WIA." The claimant testified that the course was sponsored by the Texas Workforce Commission (TWC). The hearing officer commended the claimant for taking and completing a class to learn to be a truck driver and stated that she believed the claimant was earnest in trying to improve his chances for finding employment. She went on, however, to note that "while [the] claimant was taking a course, he did not document any searches he made for jobs."

The requirements of Rules 130.102(d)(5) and (e) are to be read together. The first question is whether the claimant has made and documented job search efforts. We hold that this claimant did document job search efforts. While his annotation on the TWCC-52 is somewhat cryptic, the additional documentation he provided at the CCH explains it. Claimant's Exhibit No. 5 consists of Certificates of Achievement for perfect attendance and for successful completion of a 144-hour course as approved by [TWC]. We hold that this claimant's attendance at this short-term training program sponsored by TWC and directed towards a specific type of work satisfies the documented job search requirement for the four weeks of attendance. No one should read this opinion as indicating that college or short-term enrollment in courses with a long-term goal of better employment opportunities will per se qualify as a documented job search. We continue to decide each SIBs case on its specific facts.

Since we believe the claimant has met the requirement to document a job search every week of the qualifying period, we remand the case to the hearing officer for a determination of the second question raised by Rule 130.102(e), that is, whether there was a good faith effort by the claimant to obtain employment during the qualifying period. We specifically refer the hearing officer to Rule 130.102(e)(10), registration with the [TWC], and (11), any other relevant factor, in assessing good faith effort. We reiterate, this case is being remanded to the hearing officer only because the claimant, by presenting documented evidence of attendance at the truck driver training course, met the minimum technical requirement of Rule 130.102(e). It is now for the hearing officer based upon the totality of the evidence to determine whether the claimant's job search was made in good faith. In making that evaluation, the hearing officer should consider the claimant's job search efforts throughout the qualifying period, and as they relate to searching for a employment as a truck driver after completion of the truck driver training course.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

CONCURRING OPINION:

I write separately only to express my concern that this case will be read to say that documented attendance at any non-Texas Rehabilitation Commission, non-private provider program (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) and (3) (Rule 130.102(d)(2) and (3))) course which might at some future time lead to employment is considered to be a documented job search within the meaning of Rule 130.102(e). That is not necessarily the case.

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Thomas A. Knapp  
Appeals Judge