

APPEAL NO. 011120
FILED JUNE 28, 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 30, 2001. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 8th quarter. Claimant appealed on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and remand.

Claimant contends the hearing officer erred in determining that he is not entitled to SIBs for the 8th quarter. The hearing officer determined that claimant did not meet the good faith SIBs requirement because he did not look for work every week of the filing period. In this case, claimant looked for work every week of the qualifying period except the weeks beginning on November 5, 2000, and November 12, 2000. The qualifying period began August 20, 2000. The claimant noted on his Application for [SIBs] (TWCC-52) that, during the weeks of November 5, 2000, and November 12, 2000, he was attending a computer training course. Claimant did not offer a plan from the Texas Rehabilitation Commission (TRC), but he testified about the class he attended. Claimant said the computer class was paid for by the TRC and that he completed it and received a certificate of completion. Carrier called the vocational rehabilitation specialist it assigned to assist claimant, Mr. C. Mr. C testified that: (1) claimant was involved with the TRC; (2) claimant spent two weeks in computer software training sponsored by the TRC in November 2000; (3) he believed claimant completed the course; (4) claimant attended the course the weeks of November 6 and 10, 2000; (5) Mr. C referred claimant to the TRC; and (6) the TRC developed a plan for claimant and part of that plan was the computer training. In closing argument, carrier said that claimant did "cooperate with" the TRC.

In a recent case, the Appeals Panel discussed what constitutes satisfactory participation in a TRC-sponsored program. Texas Workers' Compensation Commission Appeal No. 010952-S, decided June 20, 2001. We noted that it had been envisioned that evidence of satisfactory participation would come from the TRC. Certainly, documentation from the TRC is preferable when a claimant is attempting to prove satisfactory participation in a TRC-sponsored program under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)). However, we noted that documentary evidence is not necessarily always required. In the case before us, claimant stated in his TWCC-52 that he had participated in a TRC-sponsored computer training program. Further, carrier's own witness said claimant had a TRC-created plan and that he believed claimant had completed the TRC training. In other words, claimant's testimony that he completed training sponsored by the TRC was corroborated by carrier's own witness. Given these

facts and our recent decision in Appeal No. 010952-S, *supra*, we must remand this case to the hearing officer for a determination of whether claimant satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC. This fact issue must be reconsidered along with our recent holding in Appeal No. 010952-S.

We must remand this case for another reason based on our recent decision in Texas Workers' Compensation Commission Appeal No. 011068-S, decided June 25, 2001. In that case, the claimant had not looked for work during the weeks he was in a training class sponsored by the Texas Workforce Commission (TWC). We stated in that case:

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.

The claimant in the case now before us did not bring certificates to show completion of his training courses. However, carrier did not dispute that he took the courses and carrier's witness corroborated claimant's testimony. We conclude that there is evidence that claimant has met the requirement to document a job search every week of the qualifying period. Therefore, we also 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)(11), regarding "any other relevant factor," in assessing good faith effort.

We reverse the hearing officer's decision and order and remand this case for reconsideration consistent with this decision. 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.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge