APPEAL NO. 011374
FILED AUGUST 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 May 30, 2001. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first compensable quarter. On appeal, the appellant (carrier) contends that the hearing officer erred as a matter of law by failing to address whether the claimant's unemployment was a direct result of his injury and by failing to properly analyze the claimant's participation in a Texas Rehabilitation Commission (TRC)-sponsored program. Additionally, the carrier contends that the hearing officer's decision is not supported by the evidence and is contrary to the overwhelming weight of credible evidence. The claimant urges affirmance.

DECISION

Affirmed, as reformed.

Section 408.142(a) provides the requirements for SIBs entitlement as follows:

> An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:
>
> (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
>
> (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
>
> (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
>
> (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)), effective November 28, 1999, provides:

> 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:
>
> (1) has returned to work in a position which is relatively equal to the injured employee's ability to work;

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

(3) has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;

(4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or

(5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

The carrier argues that the claimant did not satisfy the good faith criterion for entitlement to SIBs because he participated in a TRC-sponsored auctioneering course, which began on October 9, 2000. The parties referred to the qualifying period corresponding to the first compensable quarter as beginning on July 12, 2000, and ending on October 10, 2000. The evidence reflects that the claimant developed an Individualized Plan for Employment with the TRC on September 27, 2000, and began his two-week auctioneering course October 9, 2000. The claimant successfully completed the course. As stated in Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000, attendance in a TRC-sponsored program as described in the rule is not required in every week of the qualifying period, but only "during" that period. The elements of a full-time vocational program are described in Rule 130.101(8) and consist primarily of adherence to a prescribed plan that sets goals, describes TRC services to be rendered, and details the injured worker's responsibilities. We are satisfied that the evidence sufficiently supports the hearing officer's finding that the claimant was enrolled in and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC.

We are concerned, however, with the hearing officer's incorrect statement in his discussion that "[a] determination of whether claimant made a good faith effort to seek employment is not necessary because claimant was in compliance with Rule 130.102(d)(1) by attending auctioneering school which attendance was sanctioned and subsidized by the [TRC]." While Rule 130.102(d) is written so that fulfillment of any one subdivision of subsection (d) may be viewed as meeting a good faith search for employment (Appeal No. 001536, *supra*), Section 408.142(a)(4) requires a good faith attempt by the claimant to obtain

employment commensurate with his ability to work. We agree with the carrier that the hearing officer incorrectly addressed the "good faith" element. However, because we are satisfied that the evidence sufficiently supports the hearing officer's finding that the claimant was enrolled in and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC, we reform the decision to reflect that by satisfying Rule 130.102(d)(2), the claimant made a good faith effort to obtain employment commensurate with his ability to work and is entitled to SIBs.

The carrier also argues that the hearing officer erred by failing to address whether the claimant's unemployment was a "direct result" of his impairment, as required by Section 408.142(a)(2). We note that the hearing officer addressed this issue, as evidenced by Finding of Fact No. 3, which specifically states that the claimant's unemployment was a direct result of his impairment from the compensable injury. We have stated that a finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. Nothing in our review of the record indicates that the hearing officer's determination that the claimant's unemployment was a direct result of his impairment is so contrary to 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order of the hearing officer are affirmed as reformed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge