

APPEAL NO. 011426
FILED AUGUST 8, 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 June 13, 2001. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the second quarter. The appellant (carrier) appeals the hearing officer's determination, asserting that the hearing officer applied the wrong legal standard and the decision is contrary to the great weight and preponderance of the evidence. The claimant urges affirmance of the decision and order.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was entitled to second quarter SIBs. The carrier asserts that the claimant failed to make a good faith effort to obtain employment commensurate with his ability to work. Specifically, the carrier argues that (1) the claimant did not search for employment each week of the qualifying period, and (2) the claimant's participation in a vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) was not full time because the program lasted only 10 days during the qualifying period.

Whether the claimant made a good faith effort to obtain employment commensurate with his ability to work under either theory was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 981547, decided August 21, 1998 (Unpublished). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)).

The evidence supports the hearing officer's finding that the claimant searched for employment each week of the qualifying period.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. Pursuant to Rule 130.101(8), a full-time vocational rehabilitation program is any program provided by the TRC for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan, including an employment goal, any intermediate goals, a description of the services to be provided, the start and end dates of the described services, and the injured employee's responsibilities for successful completion of the plan. We have

held that participation in such a program does not have to span the entire qualifying period so long as it occurs "during" the qualifying period. Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000. In view of the claimant's individualized vocational rehabilitation plan with the TRC and evidence that he successfully participated in a vocational rehabilitation program, the hearing officer could find that the claimant made a good faith effort to obtain employment commensurate with his ability to work in accordance with the rule.

The carrier finally asserts that the claimant's reduced earnings were not a direct result of his compensable injury, but resulted from ineffective job search efforts. Rule 130.102(c) provides that "[a]n injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings; [Emphasis added]." A direct result determination is sufficiently supported if the record establishes that the claimant sustained a serious injury with lasting effects such that he cannot reasonably perform the job he was doing at the time of his compensable injury. Texas Workers' Compensation Commission Appeal No. 001847, decided September 15, 2000. The evidence shows that the claimant worked as a truck driver and injured his lumbar spine while unloading a trailer. The claimant subsequently underwent spinal surgery and was restricted to sedentary employment with occasional lifting not to exceed 30 pounds. Under these circumstances, the hearing officer could infer that the claimant's impairment from the compensable injury was a cause of his reduced earnings. The hearing officer's determination that the claimant is entitled to second quarter SIBs is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge