

APPEAL NO. 011629
FILED AUGUST 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 June 26, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) timely filed his third quarter supplemental income benefits (SIBs) application, and that he is entitled to SIBs for the second and third quarters. The appellant (carrier) appealed and there was no response from the claimant.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.124(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue in this case is whether the claimant timely filed his application for the third quarter of SIBs and whether the claimant met the good faith requirement of Section 408.124(a)(4) by complying with the requirements of Rule 130.102(d)(2). Rule 130.102(d)(2) provides that a good faith effort to obtain employment has been met if the claimant "has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program [VRP] sponsored by the Texas Rehabilitation Commission [TRC] during the qualifying period." In Texas Workers' Compensation Commission Appeal No. 010483-S, decided April 20, 2001, we noted that the preamble to Rule 130.102(d)(2) states that any program provided by the TRC should be considered a full-time program.

The hearing officer did not err in determining that the claimant timely filed his application for the third quarter of SIBs. The third quarter began on April 28, 2001, and ended July 27, 2001. The claimant testified that he mailed his application for the third quarter of SIBs to the carrier on April 10, 2001. The carrier asserted that it did not receive the application until May 5, 2001, and is entitled to an offset. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer resolved the inconsistencies in the evidence in favor of the claimant and she was acting within her role as fact finder in determining that the claimant timely filed his application for the third quarter of SIBs. Nothing in our review of the record indicates that the hearing officer's determination on this issue is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in determining that the claimant was entitled to SIBs for the second and third quarters. The hearing officer determined that during the qualifying periods for the second and third quarters, the claimant was enrolled in, and satisfactorily participated in, a full time VRP provided or sponsored by the TRC. The claimant presented testimony and exhibits from the college he is attending and from the TRC to support his

position that during the time period in question, he was enrolled in, and satisfactorily participated in, a full time VRP sponsored by the TRC. The determination of whether the claimant has satisfactorily participated in a full time VRP is a question of fact for the hearing officer to resolve. The hearing officer has done so and her determination is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

Finally, the carrier asserts that the hearing officer erred in determining that the claimant's unemployment during the second and third quarters was a direct result of his impairment. We have frequently noted that a direct result determination is sufficiently supported if the record established that the claimant sustained a serious injury with lasting effects such that he or she cannot reasonably perform the job he or she was doing at the time of the compensable injury. Texas Workers' Compensation Appeal No.001847, decided September 15, 2000. While there is evidence that the claimant can perform sedentary work with restrictions, nowhere is there a suggestion that the claimant can return to work at his pre-injury job as an electrician's helper. Consequently, we hold that the hearing officer's determination that the claimant's unemployment is a direct result of his impairment is supported by the evidence.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CAMDEN FIRE INSURANCE ASSOCIATION** and the name and address of its registered agent for service of process is

**T.J. FIELDS
5910 N. CENTRAL EXPRESSWAY #500
DALLAS, TEXAS 75206.**

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp

Appeals Judge