

APPEAL NO. 012092
FILED OCTOBER 23, 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 August 17, 2001. The hearing officer resolved the disputed issues by determining that, during the qualifying period for the third and fourth quarters of supplemental income benefits (SIBs), the respondent (claimant) was unemployed as a direct result of his impairment from the compensable injury; that, during the qualifying period for the third and fourth quarters of SIBs, the claimant's requirement to attempt in good faith to obtain employment commensurate with his ability to work was satisfied because the claimant was enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC); and that the claimant is entitled to SIBs for the third and fourth quarters. The appellant (carrier) appealed on sufficiency grounds, and the claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's unemployment during the qualifying periods for the third and fourth quarter of SIBs was a direct result of his impairment from the compensable injury or that he made a good faith search for employment.

The Appeals Panel has held 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 Commission Appeal No. 001847, decided September 15, 2000; Texas Workers' Compensation Commission Appeal No. 001310, decided July 21, 2000; Texas Workers' Compensation Commission Appeal No. 002982, decided February 12, 2001. While there are medical reports releasing the claimant to light duty with restrictions, nowhere is there a suggestion that the claimant can return to his preinjury job as a commercial painter. Consequently, we hold that the hearing officer's determination that the claimant's unemployment is a direct result of his compensable injury is supported by the evidence.

Turning to the issue of good faith search for employment, 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 his 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. The claimant introduced into evidence an Individualized Plan for Employment (IPE) which covered the relevant time period. The plan provides for the claimant to be trained in computers, to obtain certifications and licenses, to complete the training program, to

increase his physical stamina, and to obtain job leads. The claimant testified that he was attending the necessary classes to reach the goal set out in the IPE. The carrier asserts that since the claimant was not attending 12 hours per semester, the claimant's participation was not full time. In support of its position, the carrier submitted an exhibit which appears to be a portion of the Rehabilitation Services Manual. In pertinent part, the exhibit states that, "the client is **ordinarily** expected to complete a minimum of 12 hours of course work each semester . . ." (emphasis added).

The definition of a "full time" vocational rehabilitation program is not made with reference to any specific number of hours. Texas Workers' Compensation Commission Appeal No. 010639, decided April 25, 2001. A "full time vocational rehabilitation program" is defined in Rule 130.101(8) as follows:

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. A vocational rehabilitation plan includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

Whether or not the claimant satisfactorily participated in a full-time TRC program is a question of fact for the hearing officer to resolve. If the hearing officer determines that an injured employee has satisfactorily participated in a full-time TRC program, the claimant is relieved from making any additional job search over and above what is required in the IPE. The IPE submitted into evidence by the claimant contained all of the information required by Rule 130.101(8). The claimant testified that his counselor at the college that he attends decides what courses he needs to take, and sets up his course schedule. He further testified that he has completed every course in which he was enrolled. When asked by the hearing officer why he did not attend more classes than he did, the claimant stated that he was taking prerequisites for his main course work which starts in September 2001. The claimant stated that he was taking the classes as quickly as possible, but that he could not move on to the next course prior to completing the prerequisite course. The responsibility to determine the weight and credibility to be given to the evidence belongs to the hearing officer. It is clear from the hearing officer's decision and order that he believed the claimant was acting in good faith to accomplish the goals set out in his IPE, and that he was satisfactorily participating in a full-time vocational rehabilitation program during the relevant time period. Nothing in our review of the record indicates that the challenged determination on this issue is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the hearing officer's determination on appeal. 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's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERISURE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CINDY GHALIBAF
7610 STEMMONS FREEWAY
DALLAS, TEXAS 75247-4216.**

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge