

APPEAL NO. 012105  
FILED OCTOBER 24, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 011120, decided June 28, 2001, the Appeals Panel reversed the hearing officer's decision that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth quarter and remanded the case for the hearing officer to make two specified determinations. The hearing officer then issued an "Order Canceling Contested Case Hearing On Remand, and Order to Submit Briefs" dated July 24, 2001. This order recites that the Appeals Panel instructed the hearing officer "to reevaluate the evidence presented at the Contested Case Hearing in accordance with the legal standard set out in Appeal No. 011120"; that no new evidence has been submitted and the parties are to submit briefs in lieu of personal appearance; and that a remand hearing will not be convened. The record reflects that the parties' briefs were received by the Texas Workers' Compensation Commission (Commission) on August 20, 2001, and that on August 22, 2001, the hearing officer issued her Decision and Order on Remand determining that the claimant is entitled to SIBs for the eighth quarter. The appellant (carrier) has appealed this determination. The file does not contain a response from the claimant.

DECISION

Reversed in part and affirmed in part.

At the hearing on April 30, 2001, the parties stipulated that the qualifying period for the eighth quarter began on August 20, 2000, and ended on November 19, 2000. We observe that November 19th was actually the first day of the 14th week. The claimant's Application for [SIBs] (TWCC-52) for the eighth quarter reflects that between August 20 and November 19, 2000, the claimant made 42 job contacts and attended computer courses during the last two weeks of the qualifying period. However, the TWCC-52 reflects that the claimant did not seek employment during the seventh week of the qualifying period, namely, from October 1 to October 8, 2000. In her original Decision and Order the hearing officer determined (in her Statement of the Evidence rather than in the Findings of Fact) that during the last two weeks of the qualifying period the claimant failed to prove that he participated in and completed a vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) because he only testified to such activity and did not produce documentary evidence from the TRC. The hearing officer further determined (again in the Statement of the Evidence, not in the Findings of Fact), that "[b]ased on the evidence provided, the Claimant failed to provide a documented job search for the seventh week of the qualifying period." Accordingly, in a finding of fact, the hearing officer found that the claimant did not make a good faith effort to seek employment during the eighth quarter "filing" period.

The claimant appealed the hearing officer's adverse SIBs determination. Concerning the problem the hearing officer had with the claimant not having produced TRC documentation of his attendance at the computer courses, the claimant contended that his testimony concerning his participation in and completion of computer courses sponsored by the TRC during the final two weeks of the qualifying period was corroborated by the testimony of the vocational counselor retained by the carrier. As for his failure to look for employment during the seventh week of the qualifying period, the claimant maintained that he did not look for work that week because his back condition flared up. The carrier responded that not only did the claimant fail to produce a TRC-sponsored vocational rehabilitation plan required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2), but that his searching for employment during the two weeks he took the computer courses would not have jeopardized his successful completion of the courses, citing Texas Workers' Compensation Commission Appeal No. 000045, decided February 22, 2000, and Texas Workers' Compensation Commission Appeal No. 000677, decided May 17, 2000. The carrier further responded that the claimant had failed to look for work during the seventh week of the qualifying period and that Rule 130.102(e) requires that he have looked each week of that period and have documented such search efforts.

Notwithstanding the evidence, the hearing officer's finding, and the positions of the parties acknowledging that the claimant did not look for work during the seventh week of the qualifying period, the Appeals Panel stated in Appeal No. 011120, the remand decision, that "[i]n this case, claimant looked for work every week of the qualifying period except the weeks beginning on November 5, 2000, and November 12, 2000," and that "[w]e conclude that there is evidence that claimant has met the requirement to document a job search every week of the qualifying period." Appeal No. 011120 addressed the matter of the evidence required to establish satisfactory participation in a TRC-sponsored program, citing Texas Workers' Compensation Commission Appeal No. 010952-S, decided June 20, 2001, and stated that the case is remanded for the hearing officer to determine, in light of Appeal No. 010952-S, whether the claimant satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC. The decision went on to state that remand was also necessary for the hearing officer to consider, based on Texas Workers' Compensation Commission Appeal No. 011068-S, decided June 25, 2001, and Rule 130.102(e)(11), whether there was a good faith effort by the claimant to obtain employment during the qualifying period.

The hearing officer's decision responded to these two specified remand directions, reversing her earlier determination against the claimant, and finding for the claimant on the bases that the evidence, namely, the claimant's testimony and that of the carrier's vocational rehabilitation specialist, established that he met the good faith criterion of Rule 130.102(d)(2) despite the absence of TRC documentation, and that the claimant's participation in the computer courses during the last two weeks of the qualifying period satisfied the requirement of Rule 130.102(e) that the claimant have looked for work each week of the qualifying period.

We are satisfied that the hearing officer's determination of the Rule 130.102(d)(2) issue is sufficiently supported by the evidence (In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951)) and is consistent with recent Appeals Panel decisions. Satisfactory participation in a TRC-sponsored vocational rehabilitation 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. Because the claimant satisfactorily participated in the TRC-sponsored vocational rehabilitation program for two weeks during the SIBs qualifying period, he met the good faith requirement under Rule 130.102(d)(2).

However, we find that portion of Finding of Fact No. 3 which finds that the claimant looked for work each week of the qualifying period and thus satisfied the requirements of Rule 130.102(e) to be against the great weight of the evidence because the great weight of the evidence is that he did not look for work during the seventh week. This is not a case of the hearing officer attempting to use the computer course participation to cover not only the claimant's requirement to have looked for work during the final two weeks of the qualifying period but also the seventh. Not only was there was no contention by the claimant that his course attendance satisfied the requirement that he have looked for work during the seventh week of the qualifying period but the decision in Appeal No. 011120, *supra*, twice stated, erroneously, that the claimant had looked for work every week of the qualifying period except for the final two weeks. The great weight of the evidence establishes that the claimant failed to satisfy the Rule 130.102(e) requirement because he failed to search for employment during the seventh week of the qualifying period. Accordingly, we reverse Finding of Fact No. 3 in so far as it finds that the claimant sought employment each week of the qualifying period.

Because the evidence establishes that the claimant met the good faith requirement under Rule 130.102(d)(2), it is immaterial that he did not meet the good faith requirements under Rule 130.102(e). The claimant is entitled to SIBs for the eighth quarter.

The decision and order of the hearing officer is reversed in part and affirmed in part.

---

Philip F. O'Neill  
Appeals Judge

CONCUR:

---

Robert E. Lang  
Appeals Panel  
Manager/Judge

---

Robert W. Potts  
Appeals Judge