

APPEAL NO. 012131
FILED OCTOBER 10, 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 22, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the ninth quarter. The claimant appealed the determination on evidentiary and legal grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

VENUE

The claimant asserted, for the first time on appeal, that venue was improper in the field office. The issue of venue is waived if not raised at the hearing. Texas Workers' Compensation Commission Appeal No. 992683, decided January 5, 2000 (Unpublished). Additionally, we note that the claimant stipulated that he resided within 75 miles of the field office, on the date of his compensable injury; therefore, venue was proper in that office. See Section 410.005(a).

NINTH QUARTER SIBs

The hearing officer did not err in determining that the claimant was not entitled to ninth quarter SIBs. The burden was on the claimant to prove that he made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period. Texas Workers' Compensation Commission Appeal No. 941490, decided December 19, 1994; Sections 408.142(a)(4) and 408.143(a)(3); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102).

The claimant asserted that he satisfactorily participated in a full-time vocational rehabilitation program. Rule 130.102(d)(2) & (3) 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 Texas Rehabilitation Commission (TRC) or a private provider included in the Registry of Private Providers of Vocational Rehabilitation Services, during the qualifying period. Pursuant to Rule 130.101(8), a full-time vocational rehabilitation program is any program provided by the TRC or registered private provider 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.

Whether the claimant satisfactorily participated in a full-time vocational rehabilitation program is a fact issue for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000001, decided February 16, 2000. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as 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)). In view of the evidence presented, the hearing officer could conclude, as he did, that the claimant was not enrolled in a full-time vocational rehabilitation program sponsored by the TRC or provided by a private provider included in the Registry of Private Providers of Vocational Rehabilitation Services, and that the claimant did not make a good faith effort to obtain employment commensurate with his ability. The hearing officer's determination that the claimant is not entitled to ninth 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).

CONSTITUTIONAL ARGUMENT

The claimant next asserts that the lack of private providers of vocational rehabilitation services in Oklahoma listed in this state's Registry of Private Providers of Vocational Rehabilitation Services is a violation of the United States Constitution. We have previously stated that the Appeals Panel, as an administrative body, does not address constitutional issues. Texas Workers' Compensation Commission Appeal No. 91080, decided December 20, 1991.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(SELF-INSURED) THROUGH THE TEXAS ASSOCIATION OF COUNTIES WORKERS' COMPENSATION SELF-INSURANCE FUND** and the name and address of its registered agent for service of process is

**SAM SEALE, EXECUTIVE DIRECTOR
TEXAS ASSOCIATION OF COUNTIES
1204 SAN ANTONIO
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge