

APPEAL NO. 012267
FILED OCTOBER 24, 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 (CCH) was held on August 28, 2001. With respect to the sole issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth compensable quarter. The claimant appeals, arguing that her unemployment was a direct result of her compensable injury of _____, and that she made a good faith effort to obtain employment during the qualifying period. The claimant also argues that she was registered in a Texas Rehabilitation Commission (TRC) vocational program during the qualifying period. In its response, the respondent (carrier) argues that the evidence was sufficient to support the hearing officer and his decision and order should be affirmed.

DECISION

Affirmed in part, reversed and rendered in part.

The parties stipulated that claimant sustained a compensable injury on _____; that she had an impairment rating of 15% or greater; that she has reached maximum medical improvement; that she has not commuted any portion of her impairment income benefits (IIBs); and that the qualifying period for the fifth quarter ran from February 28, 2001, through May 29, 2001.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(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 met the good faith requirement of Section 408.124(a)(4) by complying with the requirements of Rule 130.102(d)(2) and (5).

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 [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. Here, the claimant testified that she has been working with the TRC for two years, and that, during the qualifying period, she was working with the TRC in applying for admission to (College). In addition, in evidence is a letter from the TRC, dated May 14, 2001, acknowledging that the claimant is a "Current Applicant/Client of TRC" and that the "Client is currently going through the process of admissions at College. She will be in the office professional program and will be attending training full time. We will meet in July to amend the IPE." Also in evidence is the TRC letter to the claimant, dated April 23, 2001, confirming her appointment "to discuss services" on May 14, 2001. We do not find a copy of the TRC's IPE for the claimant in the record.

As stated above, the claimant testified as to her ongoing relationship with the TRC at the CCH. The claimant complains on appeal that the hearing officer erred in failing to consider her enrollment with the TRC. Although the hearing officer failed to make mention of the testimonial or documentary evidence of the claimant's involvement with the TRC, the evidence clearly establishes that the claimant, although in contact with the TRC, was not enrolled in or satisfactorily participating in a full time VRP sponsored by the TRC during the qualifying period.

Rule 130.102(d)(5) provides that a good faith effort to obtain employment has been met if the claimant "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." The claimant filed an Application for [SIBs] (TWCC-52) in applying for fifth quarter SIBs, and included in her application a list of employers she contacted, as well as the days she attended her work-hardening program. The TWCC-52 shows that the claimant contacted, in some manner, 29 prospective employers over the 13-week qualifying period. In technical terms, the claimant "sought" employment every week of the qualifying period. However, the hearing officer noted omissions in the TWCC-52 that he believed were not persuasively explained by the claimant. In addition, the hearing officer believed that the evidence was insufficient to show that the claimant actually made all of the employment contacts she documented. Therefore, the record supports the hearing officer's finding that the claimant did not make and document a weekly search for employment during the qualifying period for the fifth quarter.

We now address the hearing officer's finding that the claimant's unemployment is not a direct result of her compensable injury. Rule 130.102(c) provides

Direct Result. An 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.

The Appeals Panel has frequently stated that an affirmative finding of direct result may be based on evidence of a serious injury with lasting effects and of an inability to reasonably perform the type of work being done at the time of the injury. See, e.g., Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995. There is sufficient evidence in the record to establish that the claimant sustained a serious injury with lasting effects such that she could no longer do the job that she had at the time of her compensable injury, and that her unemployment was a direct result of her compensable injury. While there is evidence that the claimant can perform work with some restrictions, nowhere is there a suggestion that the claimant can return to work at her preinjury job as a driver for (delivery service), requiring frequent and heavy lifting, climbing, bending, etc. The evidence does not support the hearing officer's determination that the claimant's unemployment is not the direct result of her compensable injury. Therefore, we reverse the hearing officer and render a decision that the claimant's unemployment is a direct result of her compensable injury.

The hearing officer's decision and order finding entitlement to SIBs for the fifth quarter are affirmed.

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

**CT CORPORATION SYSTEM
350 NORTH SAINT PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge