

APPEAL NO. 012602  
FILED DECEMBER 18, 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 September 6, 2001, and October 4, 2001. The hearing officer resolved the disputed issue before him by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter because she failed to make a good faith job search commensurate with her ability to work during the qualifying period. The claimant appealed, asserting that she had a total inability to work during the qualifying period for the first quarter. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the qualifying period for the first quarter of SIBs was from November 16, 2000, through February 14, 2001, inclusive. The claimant testified that she did not look for work during the qualifying period for the first quarter, and that she first met with a representative of the Texas Rehabilitation Center (TRC) on April 13, 2001. The claimant stated that she did attend school to obtain a paralegal certificate during the qualifying period, but this was done on her own and not through the TRC. The claimant attended classes on Saturdays and Sundays, and received her certificate in May of 2001. At issue in this appeal is whether the claimant had some ability to work during the qualifying period for the first quarter, thereby obligating her to perform a job search commensurate with her ability to work.

Section 408.142(a)(4) provides that in addition to the other eligibility requirements, which are not at issue in this case, an employee is entitled to SIBs if the employee has attempted in good faith to obtain employment commensurate with the employee's ability to work. Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides, in part, that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

On appeal, the claimant cites Rule 130.101(8) which contains the definition of a full time vocational rehabilitation program. Rule 130.101(8) is not applicable to this appeal. Rule 130.102(d)(2) provides that an employee has satisfied the good faith effort

requirement 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 parties stipulated that the qualifying period for the first quarter of SIBs ended on February 14, 2001. The claimant testified that she did not meet with a representative of the TRC until April 13, 2001. Therefore, this subsection does not apply to the claimant's case.

The claimant next cites Rule 130.110 which also does not apply to this appeal. Rule 130.110(a) applies to disputes over an injured employee's ability to return to work on or after the second anniversary of the initial entitlement to SIBs. The issue we must resolve in this appeal is the sufficiency of the evidence concerning the requirements of Rule 130.102(d)(4) have been satisfied. There are several exhibits in evidence which constitute records showing that the claimant had some ability to work during the qualifying period for the first quarter. The claimant underwent a required medical examination by. In his report dated May 7, 2001, Dr. B stated that the claimant had an ability to perform light duty work at that time and in fact probably had such ability as early as June of 2000. By letter dated September 7, 2001, Dr. B confirms his opinion that the claimant has some ability to work. The claimant was referred to Dr. P by her treating doctor, Dr. T. In a letter dated November 27, 2000, from Dr. P to Dr. T, Dr. P attached a work status report which indicates that the claimant is released to work with restrictions as of June 7, 2000. In a letter dated May 8, 2001, Dr. T indicates that the claimant was released to sedentary/light duty activity levels with lifting restrictions, as of May 16, 2000. Nothing in our review of the record indicates that the hearing officer's determination that the claimant had some ability to work during the qualifying period for the first quarter and is thus, not entitled to SIBs is so against the great weight and preponderance 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's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY  
COMMODORE 1  
800 BRAZOS, SUITE 750  
AUSTIN, TX 78701.**

---

Philip F. O'Neill  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Robert W. Potts  
Appeals Judge