

APPEAL NO. 020713
FILED APRIL 17, 2002

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 February 8, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the second quarter.

The claimant appeals, contending that he is entitled to SIBs due to his attendance in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). The respondent (carrier) responds, urging affirmance that the claimant was not entitled to SIBs.

DECISION

Reversed and rendered.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this is whether the claimant had met the good faith job requirement of Section 408.142(a)(4) through enrollment in and satisfactory participation in a full-time program sponsored by the TRC as set out in Rule 130.102(d)(2). That rule 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 parties stipulated that the pertinent qualifying period was from July 13 through October 11, 2001. It is relatively undisputed that the claimant enrolled in college courses in August 2001, and that he paid his tuition through financial aid and selected the classes he was to attend. On September 20, 2001, the claimant contacted the TRC and made application for their services. A letter dated October 9, 2001, from the TRC, states that the claimant was accepted for services and went on to state:

An Individualized Plan for Employment was developed on October 9, 2001. Our employment goal will be in management. He is seeking a BS in Management through the [College]. The [TRC] continues with a commitment to [claimant] to pay his tuition less any Pell Grant and his books.

The claimant had originally submitted a Application for [SIBs] (TWCC-52) dated October 12, 2001, where the claimant both asserted a total inability to work, and that he was enrolled in, and satisfactorily participating in, a full-time vocational rehabilitation program sponsored by the TRC. At a benefit review conference, the claimant was advised that he would have to look for work and the claimant subsequently filed a second TWCC-52 also dated October 12, 2001. The claimant testified that the second TWCC-52 was actually completed around December 14, 2001. In that TWCC-52, the claimant again

asserted entitlement to SIBs through the full-time TRC program and submitted some 25 job contacts. Much of the CCH dealt with the job contacts, and when they were made. Most of the hearing officer's discussion in his Statement of the Evidence focuses on the nature and quality of the job searches. The hearing officer did comment that the "evidence showed that the Claimant was not actually participating in a program with TRC sponsorship until the last three days of the qualifying period." We would also note that in addition to the October 9, 2001, letter from the TRC, the claimant offered evidence of the courses he was taking, fees paid, and testified that he had completed the four courses with passing grades (two B's and two C's).

In Texas Workers' Compensation Commission Appeal No. 020192, decided February 28, 2002, the Appeals Panel commented that the good faith aspect of a claimant's job search is met, per Rule 130.102(d)(2) "if at any time *during* the qualifying period for the quarter in dispute, the claimant is enrolled and successfully participating in a TRC-sponsored program,"¹ citing Texas Workers' Compensation Commission Appeal No. 010639, decided April 25, 2001; and Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000. Applying the principle that if the claimant has satisfactorily participated in a full-time program sponsored by the TRC at any time during the qualifying period, we reverse the hearing officer's decision and render a new decision that the claimant is entitled to SIBs for the second quarter. A claimant need only show good faith by complying with any one of the subsections of Rule 130.102(d).

¹In Appeal No. 020192, the claimant began participating in the TRC program the last week of the qualifying period.

The hearing officer's decision and order are reversed and we render a new decision that the claimant is entitled to SIBs for the second quarter.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge