

APPEAL NO. 020804
FILED MAY 16, 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 was held on March 7, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh compensable quarter. The appellant (self-insured) contends that the claimant failed to establish entitlement to SIBs and requests that the hearing officer's decision be reversed. The claimant urges affirmance.

DECISION

Affirmed.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) 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)(2) (Rule 130.102(d)(2)) 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 enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. Rule 130.101(8) defines the phrase "full time vocational rehabilitation program" as follows:

Any program, provided by the [TRC] . . . , for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end

dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

The self-insured contends that the claimant is not entitled to seventh quarter SIBs because there was no vocational rehabilitation plan in place during the qualifying period; the claimant was not satisfactorily participating in an appropriate rehabilitation program; and the claimant's unemployment was not a direct result of the compensable injury. The hearing officer's determinations are to the contrary. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We have reviewed the matters complained of by the self-insured on appeal and conclude that the hearing officer's decision is supported by sufficient evidence.

We affirm the decision and order of the hearing officer.

The true corporate name of the self-insured is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**BILL ASH
208 NORTH MILLER
BRECKENRIDGE, TEXAS 76424.**

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge