

APPEAL NO. 021247-s
FILED JULY 8, 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 April 30, 2002. The appellant/cross-respondent (claimant) appeals the hearing officer's determination that the claimant is not entitled to supplemental income benefits (SIBs) for the second and third quarters. The respondent/cross-appellant (carrier) conditionally appeals the hearing officer's determination that the claimant satisfactorily participated in a vocational rehabilitation program.

DECISION

Reversed and rendered.

The hearing officer determined that the claimant was enrolled in, and satisfactorily participated in, a vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the second quarter. The hearing officer also determined that because the program was for four hours a day, five days a week, "the program was not a full time program" and the claimant was not entitled to second quarter SIBs. For reasons more fully explained below, we disagree with the determination that the program was not full time.

Further, in regard to the third quarter of SIBs, the hearing officer determined that the claimant was not enrolled in a vocational rehabilitation program sponsored by the TRC. Although the claimant was not enrolled in a program in Texas, she had received a referral from the TRC and enrolled in a program sponsored by Oklahoma when she moved to Oklahoma, due to economic difficulties. The hearing officer further determined that although the Oklahoma program meets the qualifications to be considered full time by the standards used in Oklahoma, the program "is not a full time program as that term is used in Texas." We disagree that the program TRC gave the claimant a referral to in Oklahoma was not a TRC-sponsored program. We also disagree that the program was not full time.

As noted in Texas Workers' Compensation Commission Appeal No. 000001, decided February 16, 2000, the preamble to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.101(8) (Rule 130.101(8)) states that any program provided by the TRC should be considered a full-time program. And Texas Workers' Compensation Commission Appeal No. 000677, decided May 17, 2000, stated that this rule superceded previous Appeals Panel decisions that stressed the number of hours spent in class each week. In Texas Workers' Compensation Commission Appeal No. 001563, decided August 14, 2000, we made clear that enrollment in a "full-time" vocational rehabilitation program under the auspices of the TRC did not have to encompass the entire period, nor be a 40-hour work week, to be considered participation "during" the qualifying period, for purposes of Rule 130.102(d)(2). The hearing officer's

determination that the program is not full time due to only 20 hours course work a week has no basis in Rule 130.101(8) and was specifically rejected in Appeal No. 000677, *supra*.

Although the hearing officer did not properly apply the applicable law regarding the TRC-sponsored program, we need not remand because the hearing officer made factual findings with respect to all the elements of a full-time program, and satisfactory participation therein, which is supported by and included in the record. We therefore render the decision that the claimant satisfied the requirements of making a good faith search for employment under Rule 130.102(d)(2) and is therefore entitled to SIBs for the second and third quarters.

As for the carrier's contention that the claimant did not "satisfactorily participate" in the program, we find that there is conflicting evidence with respect to this issue, and we cannot agree that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Accordingly, we reverse the decision that the claimant is not entitled to SIBs for the second and third quarters of eligibility. We render a decision that the claimant is entitled to SIBs for the second and third quarters, and order that such benefits be paid with applicable interest.

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

**TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Philip F. O'Neill
Appeals Judge