

APPEAL NO. 022000
FILED SEPTEMBER 25, 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 commenced on June 19, 2002, with a second session on July 10, 2002. The hearing officer determined that the respondent (claimant herein) was not entitled to supplemental income benefits (SIBs) for the 1st quarter, but was entitled to SIBs for the 2nd through 10th quarters as the claimant was enrolled in and satisfactorily participating in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). The appellant (carrier herein) appeals the hearing officer's determination of entitlement, contending that the hearing officer's findings that the claimant's unemployment/ underemployment was a direct result of his impairment from the compensable injury and that the claimant satisfactorily participated in the TRC vocational rehabilitation program were contrary to the evidence. The claimant responds that the hearing officer's decision was supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We have previously held that the question of whether a claimant's unemployment was a direct result of his impairment is a question of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. We have stated that a finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. Such evidence clearly exists in the record in the present case, and we therefore find no merit in the carrier's challenge to the hearing officer's finding of direct result.

In regard to whether the claimant satisfactorily participated in a full-time TRC program, the carrier relies on the *dissenting* opinion in Texas Workers' Compensation Commission Appeal No. 010952-s, decided June 20, 2001. Applying the decision reached by the majority in Appeal No. 010952-s the claimant was not required to provide evidence of satisfactory participation from the TRC. The claimant testified as to his satisfactory participation, provided a copy of the TRC's Individualized Plan for Employment, showed that he had attended college under TRC sponsorship, and provided evidence that he is scheduled to complete his course work in December 2002 and receive his teaching certificate. While the carrier asserts that this evidence would not be convincing to "[n]intey per cent (sic) of the hearing officers in the state," we find that this assertion highly speculative at best. In any case *this* hearing officer, who was

the finder of fact in *this* case, did find the evidence persuasive. We do not find his determination that the claimant satisfactorily participated in a full-time TRC program contrary to the great weight and preponderance of the evidence.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**GARY SUDOL
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge