APPEAL NO. 022933
FILED JANUARY 8, 2003

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). Following a contested case hearing held on July 2, 2002, the hearing officer found that respondent/then-appellant (claimant) failed to prove that he made a good faith attempt to obtain employment commensurate with his ability to work during the qualifying period for the second quarter and concluded that he is not entitled to supplemental income benefits (SIBs) for that quarter. Claimant appealed the hearing officer's determinations on evidentiary sufficiency grounds. Appellant/then-respondent (carrier) urged in response that the evidence was sufficient to support the challenged findings. In Texas Workers' Compensation Commission Appeal No. 021989, decided September 12, 2002, the Appeals Panel reversed the hearing officer's decision and remanded the case for the hearing officer to make specific findings based on the evidence of record addressing the elements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) and (4) (Rule 130.102(d)(2) and (4). On remand, the hearing officer did not make any findings regarding whether there was a sufficient narrative, whether other records show that the injured employee was able to return to work, or whether claimant 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. The hearing officer made a finding of fact that "The [Texas Workers' Compensation Commission] Commission's Appeals Panel determined that the Claimant was enrolled in a program sponsored by the [TRC] during the qualifying period." However, the Appeals Panel did not make such a finding, but instead had reversed for the hearing officer to make findings in this regard. The hearing officer found that claimant is entitled to SIBs. We may not remand this case a second time. Section 410.203(c). Carrier appeals the hearing officer's decision on remand, contending that the decision should be reversed as a matter of law and that claimant did not prove SIBs entitlement. The file does not contain a response from claimant.

DECISION

We affirm.

The facts of this case are set forth in our prior decision and we will not repeat them here. On appeal, carrier contends that the hearing officer's decision and order on remand must be reversed as a matter of law. Carrier asserts that: (1) the hearing officer did not address the points set forth in the Appeals Panel's decision remanding the case; (2) the hearing officer did not explain why she found claimant is entitled to SIBs; (3) claimant had an ability to work, did not look for work, and so was not in good faith; and (4) the hearing officer made "a leap" from her initial decision in deciding on remand that claimant was enrolled in a program sponsored by the TRC.

We note that although we remanded for findings of fact regarding subsection 130.102(d)(4), the hearing officer did not make findings regarding whether claimant provided a narrative report from a doctor which specifically explained how the injury caused a total inability to work, and whether no other records show that claimant was able to return to work. The hearing officer did not address this issue in the decision on remand and we do not have the specific findings of fact that we requested to review in this regard. However, we note that, had the hearing officer made an appealed finding that there was not an adequate narrative in this case, that finding would have been affirmable. We now address the issue of whether claimant was enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period.

The hearing officer found on remand that "[t]he Commission's Appeals Panel determined that the Claimant was enrolled in a program sponsored by the [TRC] during the qualifying period." We note for the record that the Appeals Panel did not make any conclusion regarding whether claimant has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period, but had remanded for the hearing officer to make findings in that regard. However, we must address the decision that is now before us because we cannot remand this case again. The hearing officer's finding of fact does not expressly address (1) whether the program was a full-time program or (2) whether there was satisfactory participation. However, in order to find that claimant is entitled to SIBs, the hearing officer had to have found both that it was a full-time program and that there was satisfactory participation. We will now address implied findings of fact in claimant's favor in that regard.

Rule 130.101(8) states that a full-time vocational rehabilitation program is:

> Any program, provided by the [TRC] or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services, 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.

There is an individualized plan for employment (IPE) in the record in this case. The IPE is dated November 20, 2001, about five days after the qualifying period started. It lists an employment goal, lists the services to be provided by the TRC, the start and ending dates for the services, and employee's responsibilities. The evidence supports a finding that claimant was enrolled in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period.

We now address the implied finding that claimant's participation in such program was satisfactory. In this case, the hearing officer did find in her first decision and order that claimant was interacting with the TRC during the filing period. This indicates that the hearing officer believed the evidence claimant submitted about his contacts and interactions with the TRC. The best evidence of satisfactory participation will be that coming directly from the TRC. Texas Workers' Compensation Commission Appeal No. 010483-s, decided April 20, 2001. In Texas Workers' Compensation Commission Appeal No. 012351, decided November 13, 2001, we indicated that "progress reports prepared by the TRC documenting the claimant's satisfactory participation in a TRC-sponsored program during the period in question" may sufficiently support the hearing officer's determination that claimant satisfied the good faith requirement for entitlement to SIBs.

In the case before us, there is not a letter from the TRC expressly stating that "claimant was satisfactorily participating" in the TRC-sponsored program. However, on February 28, 2002, claimant's TRC counselor did write in a case note as follows:

> I assured [claimant] that, in my opinion, he was making progress toward his goal of returning to work, that he was sincere in his claim of disability, and that it had been appropriately substantiated according to TRC's rules and regulations . . . . I reassured him that, in my professional opinion, his claim was genuine, he was making progress toward his goal, and that, with TRC's help, he would eventually return to work in suitable employment.

The IPE in this case stated that claimant's goals included, among other things: (1) obtaining job leads from various agencies and persons; (2) increasing his physical stamina; (3) developing a relationship with a mental health professional; and (4) contacting a legislator regarding his workers' compensation claim. The IPE said claimant's responsibilities were to: (1) apply for services and benefits; (2) obtain services through community resources; (3) follow doctor recommendations; (4) participate in job placement activities; (5) follow up on job leads; (6) keep all appointments; (7) obtain and maintain employment; and (8) continue to pay for transportation, daily living expenses, and other expenses. The IPE said that a TRC counselor had provided counseling and guidance toward suitable employment, that 15 sessions of psychological or social worker counseling had been purchased, and that worker development services had also been purchased. Thirteen case notes from the TRC dated between November 20, 2001, and February 28, 2002, are included in the file. These case notes state that: (1) claimant chose his vocational goal; (2) the assessment of claimant's strengths and goals was reviewed with claimant; (3) claimant was allowed to make a choice of counseling service providers and claimant made a choice; (4) TRC counseling was provided to claimant regarding occupational adjustment; (5) the results of his psychological and vocational evaluations were discussed with claimant; (6) claimant was referred to the charitable organizations and was told of the availability of community low-fee or no-fee medical services; (7) claimant had obtained some kind of card with a "PIN" number for services; (8) claimant agreed to

take the action recommended regarding a legislative inquiry into his claim; (9) claimant had attended psychological counseling sessions with Dr. M; (10) claimant was working on certain named issues in counseling; (11) claimant obtained anti-inflammatory medications from his doctor that he hoped may improve his functioning; (12) claimant had drafted a letter to his legislator; and (13) claimant had initiated some calls to the TRC.

Considering these case notes together with the February 28, 2002, case note, we conclude that the implied finding that claimant was satisfactorily participating in the TRC-sponsored program is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **CAMDEN FIRE INSURANCE ASSOCIATION** and the name and address of its registered agent for service of process is

C. J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Michael B. McShane
Appeals Panel
Manager/Judge