

APPEAL NO. 030175
FILED MARCH 11, 2003

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 December 18, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth and fifth quarters.

The appellant (carrier) appeals the determinations, contending that the claimant had not met the direct result criterion, or the good faith job search criterion, and had not proven that his enrollment with the Texas Rehabilitation Commission (TRC) met the satisfactory participation requirement. The claimant responds, urging affirmance.

DECISION

Affirmed.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the impairment income benefits (IIBs) period expires if the employee has: (1) an impairment rating of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work.

First, the carrier contends that the claimant has not established that his failure to return to work is a direct result of his impairment because the claimant admitted he could perform his former light-duty job. In Texas Workers' Compensation Commission Appeal No. 990163, decided March 10, 1999, we said:

When a claimant has work restrictions imposed after a compensable injury, this, in effect, will narrow the field regarding the number and types of jobs available to that claimant. A claimant who was injured at a sedentary job should not have a more difficult time proving direct result than a claimant who sustained an injury while doing a heavy job. Under the facts of this case, the focus should not be solely on what type of job the claimant had before or on whether the claimant is physically able to perform that old job. Instead, one must consider (1) why was the claimant unemployed during the filing period and (2) did the impairment affect or impact claimant's unemployment or underemployment situation.

The claimant testified that he has not been released to return to work, that he has constant pain from his injury, and that his previous job no longer exists. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and resolved what facts were established. We conclude that the hearing officer's determinations are sufficiently

supported by the record and are 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).

The carrier also contends that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying period by complying with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)) because the claimant did not prove "he was enrolled and satisfactorily participating in a full time vocational rehabilitation program sponsored by the TRC during the qualifying period." We have previously held that if the claimant complies with Rule 130.102(d)(2) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). Texas Workers' Compensation Commission Appeal No. 020713, decided April 17, 2002.

The claimant testified that he was enrolled in a TRC program during the qualifying periods and produced documentary evidence from the TRC indicating that he was satisfactorily participating in the program during the qualifying periods. The hearing officer determined that "[d]uring the qualifying periods...the Claimant was enrolled in and satisfactorily participating in a full time vocational rehabilitation program sponsored by the [TRC]..." We conclude that the hearing officer's determinations are sufficiently supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Finally, as the hearing officer correctly notes, the claimant need not have conducted a weekly job search because he qualified for SIBs through his TRC participation.

We affirm the hearing officer's decision and order.

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 1
AUSTIN, TEXAS 78701.**

Roy L. Warren
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge