

APPEAL NO. 030369
FILED APRIL 4, 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 January 16, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier) appealed, and the file does not contain a response from the claimant.

DECISION

Reversed and rendered.

We note that in the carrier's appeal, it urges that this case be put through the "significant case" process as it is one of first impression. We do not agree, as this case merely involves applying the law to the facts. The facts relevant to this appeal are largely undisputed. The qualifying period for the first quarter of SIBs was from May 19 through August 17, 2002. It is uncontroverted that during the relevant qualifying period, the claimant was enrolled in a federally funded Trade Adjustment Assistance Program sponsored by the North American Free Trade Agreement (NAFTA). It is also uncontroverted that this program is not sponsored by the Texas Rehabilitation Commission (TRC) or a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services (Registry).

The hearing officer found as fact that the claimant was cooperating with his NAFTA counselor; was enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by NAFTA, which was a program **equivalent** to a TRC sponsored program; and that the claimant had a rehabilitation plan through NAFTA which included an employment goal, intermediate goals, a description of the services to be provided or arranged, a start and end date, and the claimant's expectations for the successful completion of the plan. We have reviewed the hearing officer's above-mentioned factual determinations and find that they are supported by sufficient evidence to be affirmed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The sole issue to be resolved on appeal is whether or not the claimant's full-time, satisfactory participation in a federally funded rehabilitation program sponsored by NAFTA satisfies the good faith requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)). We conclude that it does not.

In reaching her decision that the claimant is entitled to SIBs for the first quarter due to his participation in the NAFTA program, the hearing officer points to Texas Workers' Compensation Commission Appeal No. 021247-s, decided July 8, 2002, for support. The hearing officer reasoned that Appeal No. 021247-s stands for the proposition that "another program, in that case an out of state rehabilitation program, can be sufficient to satisfy the requirements under Rule 130.102(d)(2)." We believe that

the hearing officer's interpretation of Appeal No. 021247-s is overly broad and that the instant case is clearly distinguishable on its facts. In Appeal No. 021247-s the claimant moved out of state due to economic hardships and received a referral to the out of state program from the TRC. We determined that the TRC referral constituted sponsorship in that case. In the case before us, the claimant still lives in Texas, and there was no referral to the NAFTA program by the TRC. We find that under the facts of the case before us, Appeal No. 021247-s does not apply.

Rule 130.102(d)(2) and (3) provides, in pertinent part, that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if he or she has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC or provided by a private provider that is included in the Registry during the relevant qualifying period. Rule 130.102(d)(2) and (3) is clear, unambiguous, and as previously indicated, the NAFTA program was not sponsored by the TRC nor included in the Registry. The Rule provides for no exceptions, and the Appeals Panel is without authority to create one; this is so even where under the facts of a given case, strict application of the Rule would seem to be unequitable. See Rodriguez v. Service Lloyds Insurance Company, 997 S. W. 2d 248 (Tex. 1999). Because it is undisputed that the program in which the claimant was enrolled was neither sponsored by the TRC or provided by a private provider that is included in the Registry, we find that the hearing officer's determination that the claimant is entitled to SIBs for the first quarter is wrong as a matter of law.

The hearing officer's decision that the claimant is entitled to SIBs for the first quarter is reversed, and a new decision is rendered that the claimant is not entitled to SIBs for the first quarter.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge