

APPEAL NO. 030784  
FILED MAY 8, 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 March 10, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 9th and 10th quarters because he complied with the requirements for SIBs entitlement found in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The appellant (carrier) appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed, as reformed.

At the outset, we note the hearing officer's Finding of Fact No. 5 appears to have a typographical error. We believe the hearing officer meant to cite Rule 130.102(d)(2) instead of Rule 130.102(e). We reform the hearing officer's Finding of Fact No. 5 to read as follows: "Claimant complied with Rule 130.102(d)(2) during the qualifying period for the 9th and 10th quarters in that he successfully participated in his Texas Rehabilitation Commission [TRC] Individualized Plan for Employment [IPE] which was approved 9/19/02, which was before the end of the 9th quarter qualifying period."

Section 408.142(a) and Rule 130.102 set out the statutory and administrative rule requirements for SIBs. The parties stipulated that the qualifying period for the 9th quarter began on June 25 and ended on September 23, 2002, and the qualifying period for the 10th quarter began on September 24 and ended on December 23, 2002. At issue in this case is whether the claimant met the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1), and the good faith job search requirements of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(d)(2) and Rule 130.102(e).

Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The claimant testified that he had two surgeries to his back and that his treating doctor contemplated another back surgery because he has constant back pain that radiates down his hip, buttocks, and legs as a result of the claimant's compensable injury of \_\_\_\_\_. The hearing officer was persuaded by the claimant's testimony and the medical document of his treating doctor that his unemployment during the qualifying periods in dispute was a direct result of his impairment. We have reviewed the hearing officer's direct result determination and find

that it is supported by sufficient evidence to be affirmed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. The carrier argues that the hearing officer erred in determining that the claimant satisfactorily participated in a full-time vocational rehabilitation program because the claimant did not start classes until after the qualifying periods in dispute. In Texas Workers' Compensation Commission Appeal No. 023229, decided February 4, 2003, we held that:

Whether the claimant was satisfactorily participating in the TRC retraining program hinged on whether he was performing the requirements set out by TRC in the IPE. The claimant enrolled in the community college during the qualifying period. The mere fact that the classes did not begin until after the end of the qualifying period was a function of the community college's schedule and not of the claimant's failure to satisfactorily participate in the TRC program. The claimant began attending classes when classes began after his enrollment. Clearly, during the qualifying period the claimant was participating in the TRC training program. See Texas Workers' Compensation Commission Appeal No. 010483-s, decided April 20, 2001; [see also Texas Workers' Compensation Commission Appeal No. 030460, decided March 28, 2003].

The hearing officer noted that an IPE approved by the TRC dated September 19, 2002, reflected that the claimant prepared to enroll in a program and applied for financial assistance during the qualifying periods in dispute, even though the classes began after the qualifying period for the 10th quarter.

The carrier also argues that there was insufficient documentary evidence to establish satisfactory participation in a TRC program, citing Texas Workers' Compensation Commission Appeal No. 010483-s. In Appeal No. 010483-s, the Appeals Panel reversed the hearing officer's determination based on sufficiency of the evidence grounds and held that the claimant was enrolled in a full-time vocational rehabilitation program sponsored by the TRC as evidenced by an IPE, a TRC letter, and the claimant's testimony. In the instant case, the claimant provided documentary evidence and testified that he was enrolled in a vocational rehabilitation program sponsored by the TRC. In Texas Workers' Compensation Commission Appeal No. 010952-s, decided June 20, 2001, the evidence of the TRC sponsorship came from the claimant's testimony and the majority determined that this testimony provided minimally sufficient support for the determination that the claimant satisfied the good faith requirement under Rule 130.102(d)(2) for full-time participation in a vocational rehabilitation program sponsored by the TRC. While Appeal No. 010952-s cautioned against overreading the decision, the significance thereof, in this instance, is that it

determined that documentary evidence of the TRC sponsorship was not absolutely required and it necessarily follows from that determination that the claimant is not required to introduce the vocational rehabilitation program in evidence in order to establish SIBs entitlement. We are satisfied that the evidence sufficiently supports that the claimant satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC as required by Rule 130.102(d)(2). Cain, *supra*.

Having affirmed the determination that the claimant met the definition of good faith under Rule 130.102(d)(2), the claimant was not required to additionally satisfy the requirement of Rule 130.102(e) to document a job search effort in each week of the qualifying period. See Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000.

The hearing officer's decision and order are affirmed, as reformed.

The true corporate name of the insurance carrier is **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATE SERVICES COMPANY  
800 BRAZOS STREET  
AUSTIN, TEXAS 78701.**

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Veronica Lopez  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Panel  
Manager/Judge