

APPEAL NO. 030899
FILED JUNE 3, 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 26, 2003. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fifth and sixth quarters.

The appellant (self-insured) appealed, asserting that the claimant's failure to succeed as a real estate agent "was due to economic factors rather than his impairment" and that since the Texas Rehabilitation Commission (TRC) was not paying for the claimant's classes he "was not enrolled in a [TRC] 'sponsored' program during the qualifying period." The claimant responded, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The self-insured appeals both the direct result provision of Rule 130.102(b)(1) and the good faith provision of Rule 130.102(b)(2). The parties stipulated that the claimant sustained a compensable injury on _____, has a 26% impairment rating (IR), and that the respective qualifying periods are from May 17 through August 15, 2002, for the fifth quarter and August 16 through November 14, 2002, for the sixth quarter.

The facts are relatively undisputed that the claimant sought the assistance of TRC in 2001 and obtained a real estate license under the TRC sponsorship in May 2001. The claimant testified that initially he sold a couple of houses but when the economy "went south" he was unable to succeed in the real estate business. In May of 2002 he again sought the assistance of TRC to both renew his real estate license (which he did) and to enroll in school to become a teacher. The claimant testified, and there is evidence, that he was enrolled in and satisfactorily completed both summer sessions at a college and enrolled in and satisfactorily completed the fall semester. At the TRC urging the claimant applied for, and received grants, which apparently paid for most (or all) of his school expenses. The self-insured argues that the claimant's education was not "sponsored" by the TRC but was only monitored by the TRC. In evidence was an Individualized Plan for Employment (IPE) covering the relevant qualifying periods and a letter of clarification from the claimant's TRC counselor, which states:

The Information below is taken directly from the Rehabilitation Service Manual [RSM]. During the periods you inquired about from 5/17/02 through 11/14/02, [the claimant] was receiving assistance in the form of counseling and guidance. As the RSM documents, this is a substantial

service to the client. Purchasing any sort of service or buying the client something is not required for the client to be considered to have an active and successful case with the [TRC].

We first address the self-insured's argument regarding the direct result requirement (see Section 408.142(a)(2) and Rule 130.102(b)(1)) and the hearing officer's Finding of Fact No. 5 that the claimant "had not returned to work as a direct result of the impairment." Rule 130.102(c) provides that the direct result criterion is met "if the impairment from the compensable injury is a cause of the reduced earnings." (Emphasis added.) While we may take issue with the hearing officer's finding that the claimant had not returned to work, the fact that the claimant's impairment has forced him into another lower paying line of work is not disputed. Consequently the hearing officer's determination that the claimant has met the direct result criteria is supported by the evidence.

On the good faith criteria of Rule 130.102(b)(2), Rule 130.102(d)(2) provides that the good faith effort is met if the claimant "has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program [VRP]" sponsored by the TRC. The period covered by the clarification letter was from May 17 through November 14, 2002 (the relevant qualifying periods). The TRC clarification letter provides evidence that paying for the classes "is not required for the client to be considered to have an active and successful case with the [TRC]." The hearing officer's determination that during the qualifying periods for the fifth and sixth quarters the claimant was enrolled in and satisfactorily participating in a full time VRP sponsored by the TRC and therefore had met the criteria of a good faith effort to obtain employment commensurate with his ability to work is supported by the evidence.

The hearing officer's decision 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).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge