

APPEAL NO. 030930  
FILED JUNE 6, 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 resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter, December 5, 2002, through March 5, 2003. The appellant (carrier) appealed, disputing the determination of SIBs entitlement. The appeal file does not contain a response from the claimant.<sup>1</sup>

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(2). It was undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, and that the qualifying period for the sixth quarter was August 23 through November 21, 2002. The parties stipulated that the claimant had an impairment rating of 15% or greater and did not commute any portion of his impairment income benefits. The claimant based his request for entitlement to SIBs for the sixth quarter on his assertion that he participated in a vocational rehabilitation program with the Texas Rehabilitation Commission (TRC). The hearing officer's determination on the direct result requirement has not been appealed.

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 by finding that the claimant had enrolled in a full-time TRC-sponsored program during the qualifying period when the evidence shows that the claimant's enrollment was for a period that includes one week of the qualifying period for the sixth quarter. The carrier additionally argued that the hearing officer erred by holding that the claimant's enrollment in classes overrides the lack of a job search in each week. 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 carrier argues that the evidence did not establish that the claimant satisfactorily met and participated in the requirements of the rehabilitation plan in all respects for the qualifying period and that the individualized plan for employment

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<sup>1</sup> We note that the claimant in this case is not related to any employee of the Appeals Panel.

entered into evidence was incomplete. In Texas Workers' Compensation Commission Appeal No. 010952-s, decided June 20, 2001, the majority affirmed a hearing officer's determination of entitlement to SIBs under Rule 130.102(d)(2) for full-time participation in a vocational rehabilitation program sponsored by the TRC. In Appeal No. 010952-s, 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). While Appeal No. 010952-s cautioned against overreading the decision, the significance thereof in this instance, is that it determined that documentary evidence of TRC sponsorship was not absolutely required and it necessarily follows from that determination that, contrary to the carrier's assertions here, the claimant is not required to introduce the vocational rehabilitation program in evidence in order to establish SIBs entitlement.

Whether the claimant satisfied the good faith requirement for SIBs entitlement was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record indicates that the hearing officer's decision is 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 decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Legion Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR  
9120 BURNET ROAD  
AUSTIN, TEXAS 78758.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Chris Cowan  
Appeals Judge