

APPEAL NO. 031391
FILED JULY 23, 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 May 9, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters. The claimant appeals these determinations on sufficiency of the evidence grounds. The respondent (carrier) did not file a response.

DECISION

Affirmed as reformed.

The parties stipulated that the claimant sustained a compensable right arm injury on _____. The claimant reached maximum medical improvement on March 7, 2001, with a 20% impairment rating. The claimant did not commute impairment income benefits. The first SIBs quarter began on October 17, 2002, and continued through January 15, 2003, with the qualifying period from July 5 through October 3, 2002. The second SIBs quarter began on January 16, 2003, and continued through April 16, 2003, with a qualifying period from October 4, 2002, through January 2, 2003. The third SIBs quarter began on April 17, 2003, and continued through July 16, 2003, with a qualifying period from January 3 through April 3, 2003.

The claimant earned no wages, did not work, and did not document a weekly effort to obtain employment during any of the qualifying periods in issue. The claimant introduced a letter from the Texas Rehabilitation Commission (TRC), dated May 9, 2003, which provides:

This letter confirms that [the claimant] is presently a client of TRC. On September 9, 2002, he applied for services with TRC. On October 2, 2002, we send [sic] him for a Vocational Evaluation. TRC determined that [Mr. H] was eligible for services on November 9, 2002. An Individual Plan for Employment [IPE] was developed with him on February 5, 2003. His employment objective is [sic] janitor. He is currently in the process of selecting a provider that will assist him with job training and job placement.

The claimant's IPE provides that the following services are to be furnished from February 5, 2003, through February 5, 2004, in the furtherance of the claimant's goal of becoming a janitor: counseling and guidance, services leading to supported employment including client and family orientation, supplemental assessment for supported employment, job placement, and job skills training. The IPE further provides that the claimant's requirements include: following his doctor's recommendations, job search-obtain and maintain employment, maintain contact with the TRC counselor every two months, and learn to ride the bus. There was no evidence from the TRC

stating whether the claimant was in compliance with the requirements of the IPE. Instead, the claimant provided testimony regarding his activities during the qualifying periods.

FIRST AND SECOND QUARTER SIBS

The hearing officer did not err in determining that the claimant is not entitled to first and second quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102)) establish the requirements for entitlement to SIBs. At issue is whether the claimant was enrolled in, and satisfactorily participated in, a full-time vocation rehabilitation program sponsored by the TRC during the qualifying periods, pursuant to Rule 130.102(d)(2). 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). In view of the evidence presented in this case, we cannot conclude that the hearing officer's determination 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 (Tex. 1986).

THIRD QUARTER SIBS

As with the prior two quarters, the claimant contends that he is entitled to third quarter SIBs because he was enrolled in, and satisfactorily participated in, a full-time vocation rehabilitation program sponsored by the TRC during the qualifying period. In the statement of the evidence, the hearing officer stated, "No evidence suggested that any of the [services other than learning bus riding skills] contained in the IPE were actually provided," and "Claimant was doing nothing to fulfill this IPE...." The hearing officer made the following findings of fact:

FINDINGS OF FACT

4. The IPE prepared for the Claimant did not identify with reasonable specificity what the Claimant was to do in order to participate in the plan, nor did it contain any standard for determining satisfactory participation.
5. The IPE did not include a reasonable description of the Claimant's responsibilities for the successful completion of the IPE.
6. The Claimant was not enrolled in nor did he satisfactorily participate in a full-time vocational rehabilitation program sponsored by the [TRC].

We cannot agree with the hearing officer's determination that the claimant was not enrolled in a full-time TRC vocational rehabilitation program, during the third quarter qualifying period. A "full time vocational rehabilitation program" is defined, under Rule 130.101(8), as follows:

Any program, provided by the [TRC] . . . , for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

In view of the claimant's IPE and the letter confirming that the claimant is a client of the TRC, we conclude that the hearing officer's determination that the claimant was not enrolled in full-time TRC vocational rehabilitation program during the third quarter qualifying period is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. Accordingly, we strike Finding of Fact Nos. 4 and 5 and reform the hearing officer's decision to state that the claimant was enrolled in a full-time vocational rehabilitation program sponsored by the TRC.

The question remains whether the claimant satisfied the requirements of the TRC program during the qualifying period. This was a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 010483-s, decided April 20, 2001. We have said that, in the absence of documentation that the claimant satisfactorily participated in a full-time vocational rehabilitation program, the hearing officer could discount the claimant's testimony. See Texas Workers' Compensation Commission Appeal No. 010952-s, decided June 20, 2001. In view of the evidence presented here, the hearing officer could find, as he did, that the claimant did not satisfactorily participate in the TRC program. This determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. Because the claimant failed to establish "satisfactory participation" in a TRC program, he is not entitled to third quarter SIBs.

For the reasons stated above, the hearing officer's decision and order is affirmed as reformed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL 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.**

Edward Vilano
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge