

APPEAL NO. 031428
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 13, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first and second quarters, beginning on December 27, 2002, and continuing through June 26, 2003; and that the claimant had disability resulting from an injury sustained on _____, beginning on July 10 and continuing through July 30, 2000. The claimant appealed the hearing officer's SIBs determination asserting that: (1) the Texas Workers' Compensation Commission (Commission) did not give him proper or timely advice; (2) that he had been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC); and (3) that he made a good faith job search every week of the qualifying periods in dispute. The respondent (carrier) responded, urging affirmance. The hearing officer's disability determination has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on November 11, 2001, with a 20% impairment rating; that he has not commuted any portion of his impairment income benefits; that the first quarter of SIBs began on December 27, 2002, and continued through March 27, 2003; that the qualifying period for the first quarter of SIBs began on September 14 and continued through December 13, 2002; that the second quarter of SIBs began on March 28 and continued through June 26, 2003; and that the qualifying period for the second quarter of SIBs began on December 14, 2002, and continued through March 14, 2003.

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). At issue in this case was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work by enrolling in, and satisfactorily participating in, a full-time vocational program sponsored by the TRC pursuant to Rule 130.102(d)(2), and by searching for employment every week of the qualifying periods in dispute pursuant to Rule 130.102(e).

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 claimant

argues that he was enrolled in a TRC program because “he submitted his application, had psychological and aptitude tests, and met with his counselor” and that Rule 130.102(d)(2) does not require that the claimant have a written Individualized Plan for Employment (IPE) to be considered “enrolled.” In Texas Workers’ Compensation Commission Appeal No. 010483-s, decided April 20, 2001, 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 evidence reflects that the claimant completed an IPE on March 18, 2003, and that all the services provided by the TRC program began after March 18, 2003, a date that is outside the qualifying periods in dispute. Additionally, a TRC letter dated December 23, 2002, references the claimant’s psychological evaluation, and states that the “TESTING IS REQUIRED TO DETERMINE ELIGIBILITY.” Furthermore, another TRC letter dated March 18, 2003, states that the claimant met with the TRC counselor on “2-21-03, 3-10-03, and 3-18-03.” The hearing officer does not make a specific finding of whether the claimant was enrolled in a vocational rehabilitation program sponsored by TRC. Assuming that the claimant was enrolled in a TRC program, the question of whether the claimant satisfactorily participated in a full-time TRC-sponsored program is for the hearing officer to resolve. In view of the evidence presented and the hearing officer’s determination, while the claimant may have been enrolled in a full-time vocational program, the hearing officer was not persuaded that the claimant satisfactorily participated in a full-time vocational program sponsored by TRC.

Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. The claimant argues that he made a good faith effort to look for employment every week of the qualifying periods in dispute and that he documented his job searches. The claimant testified that he initially completed an Application for [SIBs] (TWCC-52) based on an inability to work, however, because the carrier’s doctor determined that the claimant had an ability to work he then filed a second TWCC-52 based on an ability to work on March 11, 2003. He stated that he searched for employment during the qualifying periods in dispute and documented his job searches from the information he retrieved from his computer at home. The claimant filed a TWCC-52 for the second quarter on March 20, 2003, and also documented job searches from the information he retrieved from his computer at home. The hearing officer commented that he found the claimant’s testimony neither credible nor persuasive.

We have reviewed the complained-of determinations. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer’s decision that the claimant is not entitled to the first and second quarters of SIBs is supported by

sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

With regard to the claimant's contention that he did not receive proper or timely advice from the Commission, the claimant has the burden of complying with the requirements for entitlement to SIBs. Receiving improper or untimely advice from others, including the Commission, does not relieve the claimant from complying with the required SIBs criteria.

The hearing officer's decision and order are affirmed.

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

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

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge