

APPEAL NO. 031959
FILED SEPTEMBER 16, 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 July 1, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (carrier) appeals this determination. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) states 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 carrier argues on appeal that the hearing officer erred in determining that the claimant satisfied the direct result and good faith requirements for SIBs entitlement.

We have stated that a finding of direct result is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. Whether the claimant satisfied the direct result requirement for SIBs entitlement was a factual question for the hearing officer to resolve. As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's direct result findings are 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).

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 Texas Rehabilitation Commission (TRC) during the qualifying period. Rule 130.101(8) defines the phrase "full time vocational rehabilitation program." In Texas Workers' Compensation Commission Appeal No. 001563, decided August 14, 2000, we made clear that enrollment in a "full-time"

vocational rehabilitation program under the auspices of the TRC did not have to encompass the entire period, nor be a 40-hour work week, to be considered participation "during" the qualifying period, for purposes of Rule 130.102(d)(2). Whether the claimant satisfied the good faith requirement for SIBs entitlement was a factual question for the hearing officer to resolve. The hearing officer noted that, during the qualifying period in question, the claimant was in compliance with the individualized plan for employment developed for him by the TRC. We perceive no error in the hearing officer's good faith determination and ultimate conclusion that the claimant is entitled to SIBs for the fourth quarter. Contrary to the carrier's argument on appeal, 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 is affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge