APPEAL NO. 032172
FILED SEPTEMBER 5, 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 11, 2003. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fourth quarter.

The appellant (carrier) appeals, contending that the claimant does not meet either the direct result requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (b)(1) (Rule 130.102(b)(1)) or the good faith requirement of Rule 130.102(b)(2). The claimant responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The parties stipulated that the qualifying period was from December 25, 2002, through March 25, 2003. The claimant asserts entitlement based on the good faith effort provisions of Rule 130.102(d)(2) and generally that she has met the direct result requirement of Rule 130.102(b)(1) by showing she has had a serious injury requiring four surgeries, that she has lasting effects of that injury, and that she cannot return to her preinjury job.

The claimant's compensable injury was bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. The medical evidence regarding her condition was conflicting. The carrier's appeal contends that the claimant's decision to train to go into nursing fails to explain why she "could not secure a job making her preinjury wage doing something that does not require repetitive use of the hands." The hearing officer's determination that the claimant's unemployment was a direct result of the impairment from the compensable injury is supported by sufficient evidence.

It is undisputed that during the qualifying period the claimant was enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). At issue was the satisfactory participation provision in Rule 130.102(d)(2). The claimant's amended individualized plan for employment (IPE) has a criteria of a "2.0 GPA and 12 credit hours each semester." For the semester beginning on January 13, 2003, and ending May 8, 2003 (which encompassed most of the qualifying period), the claimant enrolled for three, 3-credit hour and one, 4-credit hour courses for a total of 13-credit hours. The claimant's grades, posted after the end of the qualifying period indicates that the claimant dropped one 3-hour course (in May before the final), received F grades in one 3-hour course and the 4-hour course and received a C in one 3-hour course. It appears relatively undisputed that the claimant's overall GPA was 1.83. The carrier contends that passing only one course in four and having less

than the 2.0 GPA listed in the IPE criteria constitutes unsatisfactory participation in the TRC program.

The hearing officer carefully questioned the claimant about the courses she was taking and in his Statement of the Evidence commented, referencing Texas Workers' Compensation Commission Appeal No. 010483-s, decided April 20, 2001, that what constitutes satisfactory participation was a question of fact for the hearing officer. We do not disagree with that comment but go on to note that Appeal No. 010483-s also held that the best evidence of satisfactory participation will be that coming directly from the TRC. In this case there was no indication that the TRC had dropped the claimant for unsatisfactory participation in it's program and indeed, it was the claimant's uncontroverted testimony, that the TRC was paying for and encouraging the claimant to attend "a master student class" during the summer, that she is still in the TRC program and that she is enrolled in a second summer session class. The hearing officer found the claimant to be satisfactorily participating in the TRC program and there was no evidence from the TRC to the contrary. In fact, the evidence that the TRC was continuing to sponsor the claimant in the "master student class" and additional summer courses could lead to the conclusion that the TRC believed that the claimant was satisfactorily participating.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are 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).

We affirm the hearing officer's decision and order.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Gary L. Kilgore
Appeals Judge