

APPEAL NO. 032256
FILED SEPTEMBER 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Commission Act, TEX. LAB. CODE ANN. § *et seq.* (1989 Act). A contested case hearing was held on July 31, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 12th quarter. The appellant (carrier) appeals on sufficiency of the evidence grounds. The claimant responds, urging affirmance.

DECISION

Affirmed.

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). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the 12th quarter. 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) provides the following definition:

Full time vocational rehabilitation program--Any program, provided by the [TRC] or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services, 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.

It is undisputed that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on September 14, 1999, with an impairment rating of 15%; that the qualifying period for the 12th quarter was from January 8 through April 8, 2003; and that the 12th quarter was from April 22 through July 21, 2003.

The evidence established that the claimant developed her initial Individualized Plan for Employment (IPE) on July 20, 2000, and that her IPE was amended on May 22, 2001, and again on February 27, 2003. The claimant's goal is to become a Registered Nurse (RN). For the fall 2002 term, the claimant failed to maintain a 2.0 grade point

average (GPA) which precluded her from registering for RN courses for the Spring 2003 term. On advice of the college where she is taking classes, the claimant enrolled in courses in the Licensed Vocational Nurse (LVN) program for the Spring 2003 term. The claimant advised TRC of her situation, which prompted the February 27, 2003, amendment of the IPE. Under the amendment, the claimant became responsible for all costs of training for the Spring 2003 term, as well as for Fall 2003, because she would be repeating the Fall 2002 course then. Contingent upon the claimant maintaining a 2.0 GPA and full-time status, TRC assistance “with cost of training will be resumed as needed.” The TRC would continue to provide counseling and guidance services and coordination of services. The TRC was aware that the claimant was taking LVN courses during the Spring 2003 term. The claimant testified that she had always been responsible for all of her costs, that she applied for grants as required by the IPE, and that TRC would cover expenses beyond her grants, but “so far, they haven’t had to.”

The carrier contends that the claimant was not satisfactorily participating in a TRC program because she was not performing the requirements of her IPE, that “active participation” does not equate to “satisfactory participation,” and that the TRC was not sponsoring the claimant during the 12th quarter qualifying period.

The hearing officer did not err in reaching the determination that the claimant is entitled to 12th quarter SIBs based upon satisfactory participation in a full-time vocational rehabilitation program sponsored by TRC. The issue of what constitutes satisfactory participation in a TRC program was a question of fact for the hearing officer to resolve. In this case, the TRC counselor amended the claimant’s IPE in February 2003 to take into account her circumstances, and specifically noted that the claimant’s situation “in no way impacted your status with [the TRC].” The TRC did not drop the claimant from the program, but rather encouraged her and continued to work with her to help her achieve her goals under the IPE. See Texas Workers’ Compensation Commission Appeal No. 032172, decided September 5, 2003, citing Texas Workers’ Compensation Commission Appeal No. 010483-s, decided April 20, 2001, As to the carrier’s concern that the TRC was not sponsoring the claimant because the TRC was not providing financial support, see Texas Workers’ Compensation Commission Appeal No. 031767-s, decided August 25, 2003, in which we held that TRC sponsorship of a vocational rehabilitation program is not limited to funding of services by the TRC, but can also include services that the TRC arranged for in a vocational rehabilitation plan with no funding by the TRC. In view of the evidence presented, 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, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TWIN CITY FIRE 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.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge