

APPEAL NO. 032427
FILED NOVEMBER 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 August 13, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fifth quarter (May 28 through August 26, 2003). The appellant (carrier) appealed the determination of entitlement, disputing both the direct result and good faith determinations. The appeal file does not contain a response from the claimant.

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 parties stipulated that the claimant sustained a compensable injury on March 25, 2000, that the claimant reached maximum medical improvement on July 17, 2001, with a 15% impairment rating and that the qualifying period for the fifth quarter was from February 13 through May 14, 2003. At issue in this case was whether the claimant made a good faith effort to obtain employment commensurate with her ability to work by enrolling in, and satisfactorily participating in, a full-time vocational program sponsored by the Texas Rehabilitation Commission (TRC) pursuant to Rule 130.102(d)(2), and whether the claimant's unemployment/underemployment was a direct result of his impairment.

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. Although there was conflicting evidence, 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 TRC during the qualifying period. The claimant testified that he attended classes for which the TRC helped purchase books and acquire funding. The claimant's course schedule was in evidence and indicated attendance

during the qualifying period and his grades from both (EPCC) were also in evidence reflecting satisfactory performance. Additionally, a letter from the TRC dated November 13, 2002, was in evidence, which identified the claimant as a TRC client currently participating in a training program at EPCC. The carrier argues that the good faith determination was error because the claimant failed to present evidence on a number of the requirements for a full-time vocational rehabilitation plan. In Texas Workers' Compensation Commission Appeal No. 010952-s, decided June 20, 2001, the majority affirmed a hearing officer's determination of entitlement to SIBs under Rule 130.102(d)(2) for full-time participation in a vocational rehabilitation program sponsored by the TRC. In Appeal No. 010952-s, the evidence of the TRC sponsorship came from the claimant's testimony and the majority determined that this testimony provided minimally sufficient support for the determination that the claimant satisfied the good faith requirement under Rule 130.102(d)(2). While Appeal No. 010952-s cautioned against overreading the decision, the significance thereof in this instance is that it determined that documentary evidence of TRC sponsorship was not absolutely required and it necessarily follows from that determination that, contrary to the carrier's assertions here, the claimant is not required to introduce the vocational rehabilitation program in evidence in order to establish SIBs entitlement. There is sufficient evidence to support the hearing officer's good faith determination as well as the determination that the claimant is entitled to SIBs for the fifth quarter.

We affirm the decision and order of the hearing officer.

According to information provided by the carrier, the true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for Reliance National Insurance Company, an impaired carrier and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
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Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge