

APPEAL NO. 033253  
FILED JANUARY 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 13, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter. The appellant (carrier) appeals, contending that the claimant did not meet the good faith and direct result criteria for SIBs entitlement. The claimant asserts that sufficient evidence supports the hearing officer's decision.

DECISION

Affirmed as reformed herein.

We reform the hearing officer's decision to reflect that the CCH was held on November 13, 2003 (not November 11, 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). The SIBs criteria in issue are whether the claimant earned less than 80% of her average weekly wage (AWW) as a direct result of the impairment from the compensable injury during the qualifying period for the fifth quarter, and whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the fifth quarter. The qualifying period for the fifth quarter was from March 26 through June 24, 2003. The carrier appeals the hearing officer's findings that during the qualifying period for the fifth quarter, the claimant's unemployment was a direct result of the impairment from her compensable injury and that she made a good faith effort to seek employment. The carrier also appeals the hearing officer's decision that the claimant is entitled to SIBs for the fifth quarter.

With regard to the direct result criterion, Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's AWW 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 report of the designated doctor reflects that he assigned the claimant a 17% impairment rating for her compensable bilateral upper extremity injury. Medical reports in evidence explain that due to the claimant's surgeries for her compensable injury, the claimant has ongoing work limitations. We conclude that the hearing officer's direct result finding in favor of the claimant is supported by sufficient evidence.

With regard to the good faith criterion, Rule 130.102(d)(2) provides that an 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. The claimant has a TRC Vocational Rehabilitation Services Individualized Plan for Employment (IPE) with an amended date of December 23, 2002. The amended employment goal is to become a registered nurse. During the qualifying period for the fifth quarter, the claimant attended college classes as part of the IPE. The qualifying period for the fifth quarter encompassed part of the 2003 spring semester and part of the 2003 first summer session. Although the claimant has had difficulty with completing and passing some of her courses (she was on scholastic probation at the end of the 2003 spring semester apparently for dropping below a 2.0 GPA), a grade report dated July 8, 2003, reflects that by the end of the first summer session, her cumulative GPA was 2.07. In addition, the claimant's testimony reflects that she is continuing to attend college classes paid for by the TRC as part of the training requirements under her IPE. In the Statement of the Evidence portion of her decision, the hearing officer stated that the claimant "has met her burden to show satisfactory participation in the [TRC] program by a preponderance of the evidence." We conclude that the hearing officer's decision in favor of the claimant on the good faith criterion for SIBs entitlement is supported by sufficient evidence and 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 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 031749, decided August 20, 2003; Texas Workers' Compensation Commission Appeal No. 032172, decided September 5, 2003.

As reformed herein, 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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Robert W. Potts  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge