

APPEAL NO. 033291
FILED FEBRUARY 12, 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 was held on November 24, 2003. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 12th quarter. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the claimant established her entitlement to SIBs pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)) by demonstrating satisfactory participation in a full-time vocational rehabilitation program (VRP) sponsored by the Texas Rehabilitation Commission (TRC). The claimant did not file a response to the carrier's appeal. The claimant also did not appeal the hearing officer's determinations that she did not establish her entitlement to SIBs pursuant to Rule 130.102(d)(4) by proving that she had no ability to work in the qualifying period for the 12th quarter or pursuant to Rule 130.102(d)(1) by establishing that she had returned to work in the qualifying period in a position relatively equal to her ability to work and, as a result, those determinations will not be discussed further on appeal.

DECISION

Reversed and a new decision rendered that the claimant is not entitled to SIBs for the 12th quarter.

It is undisputed that the claimant sustained a compensable injury on _____, which resulted in her undergoing spinal fusion surgery from L3 to S1. The parties stipulated that the claimant did not commute her impairment income benefits, that she was assigned an impairment rating of 15% or more, and that the 12th quarter of SIBs ran from August 7 to November 5, 2003, with a corresponding qualifying period of April 25 to July 24, 2003. At issue in this case is whether the claimant met the good faith requirement pursuant to Rule 130.102(d)(2) by demonstrating that she was "enrolled in, and satisfactorily participated in, a full-time [VRP] sponsored by the [TRC] during the qualifying period."

The carrier argues that the hearing officer erred in determining that the claimant demonstrated entitlement to SIBs pursuant to Rule 130.102(d)(2) because she did not produce any documentary evidence from the TRC to demonstrate either that she was enrolled in a TRC-sponsored VRP in the qualifying period or that she satisfactorily participated in such program. Although we have consistently noted that evidence from the TRC is the best evidence on both the issues of sponsorship and satisfactory participation, we have also rejected the argument that documentary evidence from the TRC is absolutely required to prove either. That is, a claimant's testimony, if it is believed by the hearing officer, can be sufficient to establish SIBs entitlement under Rule 130.102(d)(2). See Texas Workers' Compensation Commission Appeal No.

010952-s, decided June 20, 2001; Texas Workers' Compensation Commission Appeal No. 011120, decided July 2, 2001; Texas Workers' Compensation Commission Appeal No. 020505, decided April 15, 2002; Texas Workers' Compensation Commission Appeal No. 030784, decided May 8, 2003. Nevertheless, the hearing officer's determination that a claimant's testimony establishes that he or she satisfactorily participated in a TRC-sponsored program is still subject to reversal if it is against the great weight of the evidence. In this instance, the claimant presented fluid testimony about the things she may have done during the qualifying period as part of an apparent plan for the TRC to pay for her to attend computer classes at a junior college. She could not provide any specificity as to what things she did, whether they were required to be performed as part of her VRP, and when she did them. In light of the sparse nature of the claimant's testimony, we believe that the hearing officer's determination that her testimony was sufficient to establish her entitlement to SIBs under Rule 130.102(d)(2) is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, we reverse the determination that the claimant satisfied the good faith requirement pursuant to Rule 130.102(d)(2).

Having reversed the hearing officer's determination that the claimant satisfied the good faith requirement under Rule 130.102(d)(2), we likewise reverse his determination that the claimant is entitled to SIBs for the 12th quarter and render a new determination that the claimant is not entitled to those benefits.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge