

APPEAL NO. 033319
FILED FEBRUARY 9, 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 25, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (carrier) appeals, contending that the hearing officer erroneously found that the claimant cooperated with the Texas Rehabilitation Commission (TRC) during the qualifying period for the fourth quarter even though the claimant's relevant Individualized Plan for Employment (IPE) stated that the claimant was to look for work. The claimant asserts that the IPE provides that he is to become employed after becoming a gunsmith and he requests 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 his ability to work during the qualifying period for the fourth quarter of SIBs. The parties agreed that the qualifying period for the fourth quarter was from April 13 through July 12, 2003. It is undisputed that the claimant did not work or look for work during the qualifying period for the fourth quarter. The claimant contended that he made a good faith effort under Rule 130.102(d)(2), which 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.

A TRC Vocational Rehabilitation Services IPE for the claimant dated April 29, 2003, which was within the relevant qualifying period, states that the employment goal is to be a gunsmith and that it is expected that the claimant will become employed after completing the services of the IPE. The April 29, 2003, IPE does not mention gunsmith training as a necessary step or as services to be provided; however, a Self-Employment Plan with a facsimile transmission date of May 16, 2003, which is also within the relevant qualifying period and which was apparently formulated by a TRC counselor, states in part that "He is capable of working in a sedentary job and has demonstrated the ability to be a full-time gunsmith student and successfully complete the training on schedule." The claimant testified that during the relevant qualifying period and continuing through the date of the CCH, he was participating in a home-study gunsmithing course through a gunsmithing school as part of the TRC program, as well as attending meetings at the small business development center (SBDC) of a university as part of the TRC program. The claimant indicated that the gunsmithing course would

be completed around April 2004 and that a machine shop course for gunsmithing would follow that. A document from the gunsmithing school, which appears to have been mailed to the claimant shortly after the relevant qualifying period ended, reflects that the claimant had successfully completed lessons one through three, and a letter from the university reflects that the claimant met with a consultant for the university's SBDC during the relevant qualifying period to discuss the gunsmithing business. An amended TRC IPE for the claimant dated September 24, 2003, which was after the qualifying period ended, is also in evidence. The amended IPE also lists the employment goal as gunsmith, but has an amended necessary step of participating in gunsmith training and lists as part of the services to be provided as assistance with job placement following completion of gunsmith training. The amended IPE states that it is expected that the claimant will become employed after completing the last service on the IPE.

The hearing officer found that during the qualifying period for the fourth quarter, the claimant was enrolled in, and satisfactorily participating in, a full-time program of vocational rehabilitation sponsored by the TRC, and concluded that the claimant is entitled to SIBs for the fourth quarter. While the original IPE did not list gunsmith training as a step towards the employment goal of becoming a gunsmith, it is clear from the self-employment plan that was made during the relevant qualifying period that such training is part of the claimant's TRC program. In addition, the hearing officer could reasonably conclude that the TRC's expectation for the claimant to become employed as a gunsmith would follow the completion of the claimant's gunsmith training. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision that the claimant is entitled to SIBs for the fourth quarter 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).

We affirm the hearing officer's decision and order.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge