

APPEAL NO. 040137
FILED FEBRUARY 25, 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 December 29, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters, and that she is entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. N in the amount of \$565.74. In her appeal, the claimant asserts error in the determination that she is not entitled to SIBs for the first, second, and third quarters. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. Neither party appealed the hearing officer's determination that the claimant is entitled to travel expense reimbursement in the amount of \$565.74 and that determination has, therefore, become final. Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on November 20, 2001, with an impairment rating of 24%; that she did not commute her impairment income benefits; that the first quarter of SIBs ran from April 9 to July 8, 2003, with a corresponding qualifying period of December 26, 2002, to March 26, 2003; that the second quarter of SIBs ran from July 9 to October 7, 2003, with a corresponding qualifying period of March 27 to June 25, 2003; that the third quarter of SIBs ran from October 8, 2003, to January 6, 2004, with a corresponding qualifying period of June 26 to September 24, 2003; and that the claimant did not seek any employment or earn any wages during the relevant qualifying periods. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by showing that she had a total inability to work during the qualifying periods for the first, second, and third quarters. Rule 130.102(d)(4) 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 unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. In the alternative, the claimant argues that she satisfied the good faith requirement pursuant to Rule 130.012(d)(2) by satisfactorily participating in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC).

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement of Rule 130.102(d)(4) by demonstrating that she had no ability to work in the relevant qualifying periods. The hearing officer was not persuaded that the evidence was sufficient to satisfy the requirements of Rule 130.102(d)(4). Specifically, the hearing officer determined that other records showed that the claimant had some ability to work in the qualifying periods. Nothing in our review of the record reveals that the hearing officer's determinations in that regard are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith determination, or the determination that the claimant is not entitled to SIBs for the first, second, and third quarters, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer also did not err in determining that the claimant did not satisfy the good faith requirement under Rule 130.102(d)(2), by satisfactorily participating in a TRC-sponsored vocational rehabilitation program. The evidence in this case demonstrates that the claimant stopped attending classes she was taking as part of her TRC program in May 2002, shortly before she underwent spinal surgery. There is no indication that she returned to classes at any point during the qualifying periods at issue in this case and, indeed, the claimant testified that she is no longer physically capable of taking classes. In addition, the evidence does not reflect that the claimant was involved in any other type of vocational rehabilitation program under the auspices of the TRC in the qualifying periods for the first, second, or third quarters. Thus, the hearing officer did not err in determining that the claimant did not prove her entitlement to SIBs under Rule 130.102(d)(2).

The hearing officer's decision and order are affirmed.

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

Edward Vilano
Appeals Judge