

APPEAL NO. 040541  
FILED APRIL 19, 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 February 17, 2004. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter (beginning October 7, 2003, and ending January 5, 2004). The appellant (carrier) appealed, disputing the determination of entitlement. The claimant responded, urging 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 criteria in dispute are whether during the qualifying period for the sixth quarter: (1) the claimant earned less than 80% of her average weekly wage as a direct result of the impairment from her compensable injury; and (2) the claimant made a good faith effort to obtain employment commensurate with her ability to work. With regard to the direct result criterion, the hearing officer found that the claimant's unemployment during the qualifying period for the sixth quarter was a direct result of her impairment from her compensable injury. See Rule 130.102(c). With regard to the good faith criterion, the hearing officer found that as a result of her enrollment in, and satisfactory participation in, a vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC), the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the sixth quarter. See Rule 130.102(d)(2). The hearing officer concluded that the claimant is entitled to SIBs for the sixth quarter.

The claimant's compensable injury was bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. The medical evidence regarding her condition was conflicting. The carrier's appeal contends that the claimant's decision to train to go into nursing fails to explain why she "could not secure a job making her preinjury wage doing something that does not require repetitive use of the hands." The hearing officer's determination that the claimant's unemployment was a direct result of the impairment from the compensable injury is supported by sufficient evidence.

The carrier contended that the claimant did not meet the good faith criteria for SIBs entitlement under Rule 130.102(d)(2) because the evidence established that the claimant was not satisfactorily participating in the TRC program because she did not complete the number of college hours required by the TRC Individualized Plan for Employment (IPE) or maintain the required grade point average in the semesters she attended school during the relevant qualifying period. The claimant testified that the

TRC approved the number of hours she registered for during the relevant qualifying period and there was evidence that the TRC continued sponsoring the claimant. There was evidence from the claimant's treating doctor dated August 7, 2003, that stated the claimant should limit the number of hours she takes for the fall semester. In Texas Workers' Compensation Commission Appeal No. 020713, decided April 17, 2002, the Appeals Panel noted that the good faith requirement per Rule 130.102(d)(2) is met if at any time during the qualifying period for the quarter in dispute, the claimant is enrolled in and satisfactorily participating in a TRC-sponsored program. See also Texas Workers' Compensation Commission Appeal No. 020192, decided February 28, 2002. In reaching her decision, the hearing officer could consider the medical records in evidence; the correspondence from the TRC; the TRC IPE; and the claimant's testimony. The hearing officer is the sole judge of the weight and credibility of 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 is supported by sufficient evidence and that it 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 decision and order of the hearing officer.

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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Margaret L. Turner  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Robert W. Potts  
Appeals Judge