

APPEAL NO. 040706
FILED MAY 24, 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 March 2, 2004. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 12th quarter. The appellant (self-insured) appealed the hearing officer's SIBs determination asserting that the claimant failed to establish that her unemployment or underemployment was a direct result of her compensable injury, and that she failed to establish that she was satisfactorily participating in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the relevant qualifying period. The appeal file does not contain a response from the claimant.

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 § Rule 130.102 (Rule 130.102). The SIBs criteria in issue in this case are whether the claimant satisfied the good faith requirement by satisfactorily participating in a full-time vocational rehabilitation program sponsored by the TRC pursuant to Rule 130.102(d)(2), and whether the claimant's unemployment during the qualifying period was a direct result of her impairment. There was conflicting evidence in the record concerning whether or not the claimant satisfactorily participated in her TRC program during the relevant qualifying period. 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 determines what facts the evidence has established. Our review of the record reveals that the hearing officer's determination that the claimant did satisfy the good faith requirement under Rule 130.102(d)(2) 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 or manifestly unjust. Thus, no sound basis exists for us to reverse the determination that the claimant is entitled to SIBs for the 12th quarter on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). See *also* Texas Workers' Compensation Commission Appeal No. 030784, decided May 8, 2003.

As far as direct result is concerned, the self-insured points to a functional capacity evaluation and the testimony of its witness, the school principal, to the effect that the claimant would be able to perform her regular job duties, even with the listed restrictions. However, the claimant testified to the contrary. We have stated that a finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation

Commission Appeal No. 950771, decided June 29, 1995. There was evidence of this in the present case, supporting the hearing officer's finding of direct result.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Daniel R. Barry
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge