

APPEAL NO. 041630
FILED AUGUST 26, 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 June 15, 2004. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th quarter, February 26 through May 27, 2004. The appellant (carrier) appealed, arguing that the evidence is clear and uncontroverted that the claimant failed during the qualifying period to satisfactorily participate in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC).¹ The appeal file did not contain a response from the claimant.

DECISION

Reversed and rendered.

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 parties stipulated that the claimant sustained a compensable injury on _____, with an impairment rating of 15% or greater; that the claimant has not commuted any portion of the impairment income benefits; and that the qualifying period for the 13th quarter was from November 13, 2003, through February 11, 2004. At issue in this case was whether the claimant made a good faith effort to obtain employment commensurate with her ability to work by enrolling in, and satisfactorily participating in, a full-time vocational rehabilitation program sponsored by the TRC pursuant to Rule 130.102(d)(2).

Rule 130.102(d)(2) 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. There is an amended Individualized Plan for Employment (IPE) in the record in this case, dated August 15, 2003. It lists an employment goal, lists the services to be provided by TRC, the start and ending date for the services, and the claimant's responsibilities. The responsibilities listed included maintaining at least a 2.0 grade point average and nine credit hours each semester. The claimant testified that during the entire time she had been receiving services from the TRC, Ms. C had been her counselor. A deposition on written questions was in evidence from Ms. C. In her deposition on written questions, Ms. C acknowledged writing a letter dated October 30, 2003, requesting that the claimant meet with her advisor at school and develop a degree plan and send the plan to her once it had been developed. Ms. C then replied that to her knowledge the claimant did not meet with her advisor and develop a degree plan. Further, Ms. C acknowledged that in the fall semester, the claimant did not complete nine credit hours for the fall 2003 semester. When asked whether it was her opinion that from November

¹ TRC is now part of the Department of Assistive and Rehabilitative Services.

13, 2003, through February 11, 2004, the claimant was enrolled in, and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC, Ms. C replied no.

It is undisputed that the claimant did not perform a job search during the qualifying period at issue. In the Background Information portion of the decision and order the hearing officer states the TRC appears to be satisfied with the claimant's effort and progress referencing a December 11, 2003, letter written by the claimant's TRC counselor which stated the claimant "is satisfactorily enrolled for the Fall 2003. TRC will continue sponsorship of her training expenses for the spring [sic] 2004 semester." The referenced letter was not in the record.

The hearing officer notes that in matters of satisfactory participation, the Texas Workers' Compensation Commission will usually defer to the opinion of the TRC as to whether one of its clients is satisfactorily participating. We agree. Texas Workers' Compensation Commission Appeal No. 010483-s, decided April 20, 2001, held that the best evidence of satisfactory participation will be that coming directly from the TRC. Although in the instant case there was some evidence that the TRC had not dropped the claimant from its program for unsatisfactory participation and in fact was continuing to pay for and encourage the claimant to continue the program, in light of the testimony from the claimant's TRC counselor that the claimant was not satisfactorily participating in a full-time vocational rehabilitation program we therefore reverse the hearing officer's decision that the claimant is entitled to SIBs for the 13th quarter and render a decision that the claimant is not entitled to SIBs for the 13th quarter.

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).**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge