

APPEAL NO. 041728
FILED AUGUST 30, 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 10, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second, third, and fourth quarters. The claimant appealed, arguing that he is entitled to SIBs for the quarters in dispute because he was enrolled in and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

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 complying with Rules 130.102(d)(2) and 130.102(d)(5). The parties stipulated that the claimant sustained a compensable injury on June 2, 2000; that he reached maximum medical improvement on July 6, 2002, with an impairment rating of 17%; that he has not commuted any portion of his impairment income benefits; that the qualifying period for the second quarter of SIBs was from May 18 through August 16, 2003; that the qualifying period for the third quarter of SIBs was from August 17 through November 15, 2003; and that the qualifying period for the fourth quarter of SIBs was from November 16, 2003, through February 14, 2004 .

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. The claimant argues that he was "satisfactorily participating in a full-time vocation [sic] rehabilitation program sponsored by TRC." In the instant case, the hearing officer reviewed the evidence and found that the claimant was not satisfactorily participating in a full-time vocational rehabilitation program sponsored by the TRC for the SIBs quarters in dispute. The question of whether the claimant satisfactorily participated in the full-time TRC program was a question of fact for the hearing officer to resolve.

Rule 130.102(d)(5) 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 provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return

to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. In the instant case, the hearing officer found that during the second and third quarters of SIBs, the claimant did not search for employment every week of the qualifying periods in dispute. The Appeals Panel has held that the documentation requirement of Rule 130.102(e) is mandatory and undocumented employment contacts may not be considered in arriving at the good faith determination. Texas Workers' Compensation Commission Appeal No. 000505, decided April 20, 2000. With regard to the fourth quarter, the hearing officer found that the claimant's job search with one type of employer was structured in an attempt to qualify for SIBs, not to find a job.

In his appeal, the claimant attached a hand-written note that appears to complain of ineffective assistance by the ombudsman. The claimant specifically complains that he was not represented by "someone who is well versed in the Appeals Laws and Labor Code." The record reflects that the claimant understood that the ombudsman was not an attorney and that he had the right to be represented by an attorney. The claimant did not raise any objection to the ombudsman's assistance and indeed, in response to questioning from the hearing officer, the claimant stated that he wanted to proceed with the assistance of the ombudsman. In addition, after reviewing the record, we find no evidence of the ombudsman having been anything but completely competent in her assistance of the claimant and we perceive no error. Additionally, the claimant complains that he was "not advised to bring any proof of anything to the hearing." It was the claimant's responsibility to ensure that all of the exhibits he wanted in evidence were offered into evidence at the hearing. The claimant has not demonstrated grounds for reversal.

We have reviewed the complained-of determinations and conclude that nothing in our review of the record indicates that the hearing officer's SIBs determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Margaret L. Turner
Appeals Judge