

APPEAL NO. 042630  
FILED DECEMBER 2, 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 (CCH) was held on September 28, 2004. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter.

The appellant (carrier) appeals, contending that the case manager identified by the hearing officer as a private provider was not included in the Registry of Private Providers of Vocational Rehabilitation Services. The file does not contain a response from the claimant.

DECISION

Reversed and a new decision 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). At issue in this case is the good faith effort to obtain employment commensurate with the ability to work requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). The claimant contends that he has met the good faith criteria for the second quarter by either making a good faith job search pursuant to Rule 130.102(e) and/or by participating in a full-time vocational rehabilitation program (VRP).

Rule 130.102(d)(5) provides in pertinent part, that an injured employee has made the required good faith effort if the employee "has provided sufficient documentation as described in subsection (e) of this section 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. The parties stipulated that the relevant qualifying period was from February 26 to May 26, 2004. The claimant's Application for Supplemental Income Benefits (TWCC-52) lists some 20 jobs contacts but none prior to April 3, 2004. The hearing officer found, and is supported by the evidence, that the claimant "did not document a job contact every week." The claimant had not complied with Rule 130.102(e).

The claimant testified that he had been in contact with the Texas Rehabilitation Commission (TRC) (now part of the Department of Assistance and Rehabilitation Services) but was not now attending classes and did not have an Individualized Plan for Employment. The hearing officer found and is supported by the evidence that the

claimant was not enrolled in a full-time VRP sponsored by the TRC or its successor agency. See Rule 130.102(d)(2).

The hearing officer did however find that during the qualifying period for the second quarter, the claimant “was enrolled in, and satisfactorily participated in, a full time [VRP] sponsored [by] a private provider of vocational services, his case manager.” Rule 130.102(d)(3) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee’s ability to work if during the qualifying period the employee has been enrolled in, and satisfactorily participated in, a full-time VRP provided by a private provider that is included in the registry of Private Providers of Vocational Rehabilitation Services. We would first note that there was no evidence that the case manager was included in the Registry of Private Providers of Vocational Rehabilitation Services. The case manager had provided some job leads to the claimant and it was in dispute whether or not the claimant had actually made contact with those job leads. Rule 130.101(8) defines a full-time VRP program as:

(8) Full-time vocational rehabilitation program--Any program, provided by the Texas Rehabilitation Commission or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services, for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee’s responsibilities for the successful completion of the plan.

There was no VRP in evidence which meets the minimum requirements of Rule 130.101. The preamble to Rule 130.102(d)(3) contains a comment concerning who would be allowed to provide vocational rehabilitation services. The Commission replied:

There is no preclusion of any individual from providing vocational rehabilitation services and to apply to be included in the Registry of Private Providers of Vocational Rehabilitation Services. As long as the individual providing the vocational rehabilitation services meets the requirements of § 136.2, it does not matter if the provider is an individual in business for him/herself, or affiliated with a carrier or company that provides vocational rehabilitation services.

There was no evidence that the case manager met the requirements of Rule 136.2 or that the case manager was included in the Registry of Private Providers of Vocational Rehabilitation Services. The hearing officer’s determination that the claimant

was enrolled in, and satisfactorily participated in, a full-time VRP or that the case manager was a private provider of vocational rehabilitation services is against the great weight and preponderance of the evidence. There is insufficient evidence that the claimant satisfied the good faith effort to obtain employment requirement pursuant to Rule 130.102(d)(3).

Accordingly we reverse the hearing officer's decision that the claimant is entitled to SIBs and render a new decision that the claimant is not entitled to SIBs for the second quarter.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Robert W. Potts  
Appeals Judge