

APPEAL NO. 080809  
FILED JULY 17, 2008

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 April 23, 2008. The hearing officer decided that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 19th and the 20th quarters. The claimant appealed, contending that she was enrolled in and satisfactorily participating in a full-time vocational rehabilitation program (VRP) sponsored by the Department of Assistive and Rehabilitative Services (DARS) during the qualifying periods for the 19th and the 20th quarters. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) the claimant sustained a compensable low back and left leg injury on \_\_\_\_\_; (2) the claimant's impairment rating is 20%; (3) the claimant did not commute any portion of her impairment income benefits; and (4) the qualifying period for the 19th quarter is from October 12, 2006, through January 10, 2007, and for the 20th quarter is from January 11, 2007, through April 11, 2007. The hearing officer's determination that the claimant's unemployment during the qualifying periods for the 19th and the 20th quarters was a direct result of the impairment resulting from the compensable injury has not been appealed.

**SIBS 19TH QUARTER**

Section 408.142 as amended by the 79th Legislature, effective September 1, 2005, references the requirements of Section 408.1415 regarding work search compliance standards. Section 408.1415(a) states that the (Texas Department of Insurance, Division of Workers' Compensation (Division)) Commissioner by rule shall adopt compliance standards for SIBs recipients. In that no such rules have been implemented as of this date, we refer to the eligibility criteria for SIBs entitlement in 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Commissioner's Bulletin No. B-0058-05 dated September 23, 2005, provides that until new SIBs rules are adopted, the Division Rules 130.100-130.110 govern the eligibility and payment of SIBs and remain in effect until they are amended, repealed, or modified by the Commissioner of Workers' Compensation. At the CCH, the claimant contended that she met the requirement to make a good faith effort to obtain employment commensurate with her ability to work based on 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 VRP sponsored by the Texas Rehabilitation Commission (TRC) (now DARS) during the

qualifying period. In evidence was an amended DARS Individualized Plan for Employment (IPE) for the claimant dated February 13, 2006, and approved by a DARS vocational rehabilitation counselor (VRC), which listed the services provided from February 13, 2006, to December 31, 2006, as including guidance/counseling, and tuition/fees/books and supplies at a specified community college for required courses leading to certification and a degree. The IPE stated that it is expected the claimant will become employed after completing the last service on the IPE.

In evidence is a form letter from DARS, dated October 13, 2006 (within the qualifying period of the 19th quarter), stating that the claimant "is satisfactorily participating in an IPE dated 2/13/06." It is signed by a DARS Rehabilitative Services Technician (RST), and the evidence establishes that RSTs are authorized to sign this form "under the directive of the counselor." The current VRC testified that the claimant had been an active client with DARS since 2002, and that during the qualifying period for the 19th quarter, the claimant was an active consumer of DARS services, was compliant with DARS directives, and was satisfactorily completing her requirements. Within the qualifying period for the 19th quarter, the claimant had documented contact with DARS on October 13, 2006, and January 9, 2007. DARS notes document that the claimant discussed with the assigned VRC on January 9, 2007, and on March 20, 2007, that her medical condition/disability prevented the completion of some of her 2006 fall semester classes.

The hearing officer in the Background Information portion of her decision wrote: "[i]n May 2006, the [c]laimant did obtain an associates degree from [Community College] in general studies, of which DARS was unaware until December 10, 2007, when a DARS representative learned of this development while testifying at a prior [CCH] herein." The hearing officer further wrote: "[t]he evidence, including the testimony of [the current VRC] with DARS, does not establish that the [c]laimant satisfactorily participated in a DARS-sponsored [VRP] during the 19th quarter qualifying period." In discussing the letter dated October 13, 2006, from the DARS RST, the hearing officer wrote: "it is clear from the evidence that this document was generated as evidence sought to be used at the [CCH] on December 10, 2007 relative to the 18th quarter. The evidence does not credibly establish that [the RST] was speaking to the quality of the [c]laimant's activities specifically on October 12 or October 13 of 2006." The hearing officer further wrote: "[the current VRC] also testified that DARS does not really evaluate whether a client is 'satisfactorily participating' in their program; as long as the client is in [the] DARS' system and does not request that services be discontinued, then DARS will not remove the client from the program." Those statements are not supported by the evidence.

Rule 130.101(8) provides in part:

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.

As noted in Appeals Panel Decision (APD) 070702, decided June 12, 2007, it is the obligation of DARS to assess the injured worker and develop an appropriate IPE for each worker due to its expertise. There is no authority which supports the proposition that a hearing officer may substitute his or her judgment for that of DARS in determining how to best retrain and return an injured worker to the workforce. If DARS discovers that a particular IPE is not appropriate for an injured employee, it is they, and not the hearing officer, who should amend it. The question of whether the claimant is satisfactorily participating in the full-time DARS VRP is a question of fact for the hearing officer to resolve. In APD 010483-s, decided April 20, 2001, the Appeals Panel held that the best evidence of satisfactory participation will be that coming directly from TRC (now DARS).

With regard to the qualifying period for the 19th quarter, in evidence is an IPE in effect until December 31, 2006, which was just prior to the January 10, 2007, ending date of the 19th quarter qualifying period, as well as the claimant's college transcript from the college DARS was paying for her to attend, correspondence from DARS regarding satisfactory participation, and the claimant's and the current VRC's testimony that the claimant fulfilled the requirements of her IPE during the qualifying period for the 19th quarter at issue. Contrary to the self-insured's argument that because the claimant did not complete all the tasks listed under the client's responsibilities section of the IPE, the claimant was not satisfactorily participating with her IPE, the current VRC testified that not all client responsibilities under the IPE had to be completed at once as long as the client was working towards the goal of retraining and of obtaining a job. She also testified that she was aware that the claimant had an associate degree from the specified community college but she was not aware of the date on which the degree was obtained, which is consistent with her prior testimony in the December 10, 2007, CCH. The claimant testified that she did not complete an associate degree until the spring of 2007. There is no other evidence to the contrary.

In this case, the evidence does not support: (1) the hearing officer's findings that the claimant obtained an associate degree from (Community College) in May 2006, of which her DARS VRC was not aware of until she was so informed at the CCH in December 2007, and that between October 12, 2006, and January 10, 2007 (the 19th quarter qualifying period), the claimant was enrolled in, but did not satisfactorily participate in, a full-time VRP sponsored by DARS; and (2) the hearing officer's determination that the claimant is not entitled to SIBs for the 19th quarter. Accordingly, we hold that under the evidence presented, the hearing officer's determination that between October 12, 2006, and January 10, 2007, the claimant did not satisfactorily participate in a full-time VRP sponsored by DARS is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We reverse the hearing officer's determination that the claimant is not entitled to SIBs for the 19th quarter and render a new decision that the claimant is entitled to SIBs for the 19th quarter.

## SIBS 20TH QUARTER

The hearing officer's decision that the claimant is not entitled to SIBs for the 20th quarter is supported by sufficient evidence and is affirmed because there was neither an IPE nor evidence of a full-time VRP complying with the minimum requirements as provided in Rule 130.101(8) during the qualifying period for the 20th quarter.

### SUMMARY

We reverse the determination that the claimant is not entitled to SIBs for the 19th quarter and render a new decision that the claimant is entitled to SIBs for the 19th quarter. We affirm the hearing officer's determination that the claimant is not entitled to SIBs for the 20th 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

**PA  
(ADDRESS)  
(CITY), (ZIP CODE).**

---

Cynthia A. Brown  
Appeals Judge

CONCUR:

---

Veronica L. Ruberto  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge