

APPEAL NO. 011536-S
FILED AUGUST 28, 2001

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 June 13, 2001. With regard to the disputed issues, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 14th and 15th quarters.

The claimant appealed, contending that he had shown that during the applicable qualifying periods, he had been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). The file does not contain a response from the respondent (carrier).

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 § 130.102 (Rule 130.102). Rule 130.102(b) provides that an injured employee who has an impairment rating of 15% or greater and who has not commuted any impairment income benefits is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. The hearing officer's finding that the claimant's unemployment during the applicable quarters was a direct result of the impairment from the compensable injury has not been appealed and will not be discussed further. The parties stipulated that the qualifying period for the 14th quarter began on August 25, 2000, with the qualifying period for the 15th quarter ending on February 22, 2001.

Although other aspects of how an injured employee could meet the good faith requirement were discussed at the CCH, the principal contention both at the CCH and on appeal is that the claimant had complied with Rule 130.102(d)(2), which 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. Rule 130.101(8) defines the phrase "full time vocational rehabilitation program." At issue is whether the claimant was in a vocational rehabilitation program rather than whether his course was a full-time program.

The hearing officer, under "Procedural Matters," commented:

Neither party requested that Subpoenas be issued, yet both parties complained

that the [TRC] had not been cooperative in providing any information related to the Claimant's alleged participation in college courses at College or University purportedly sponsored by the [TRC].

Although the claimant testified that the TRC was providing tuition assistance and paying for his books there are only two items from the TRC in evidence. One is a "To Whom It May Concern" letter dated November 2, 2000, stating:

[Claimant] is currently receiving services from [TRC]. If you have further questions please call undersigned @ [telephone number].

The other is a letter dated April 17, 2001, stating:

[Claimant], [social security number], ask me to write to your office outlining his current involvement with the [TRC]. [Claimant] is enrolled in the [University] working on completing his Bachelors degree in Business. He maintains contact on a semester basis for counseling.

The hearing officer analyzed the various rules pertaining to SIBs and commented that the quoted letters do not establish employment goals, give start and end dates, or explain the claimant's responsibilities as required by Rule 130.101(8). The hearing officer found that the claimant had not proven that he had been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC. The claimant contends that the cited letters and the claimant's testimony do show compliance with Rules 130.101(8) and 130.102(d)(2).

The hearing officer's decision is supported by the evidence. In Texas Workers' Compensation Commission Appeal No. 010952-S, decided June 20, 2001, a majority affirmed a hearing officer's finding of entitlement to SIBs based in part on the claimant's testimony regarding participation in a vocational rehabilitation program sponsored by the TRC. However, that case went on to caution that, in the absence of documentation that the claimant is satisfactorily participating in a full-time vocational rehabilitation program, the fact finder could "well discount uncorroborated testimony of TRC sponsorship." Although the parties commented on the difficulty of obtaining documentation from the TRC, as the hearing officer mentioned, neither party sought to avail themselves of the subpoena process, and the claimant failed to offer transcripts, tuition receipts, or other University documentation, which might have indicated the degree of TRC involvement. The hearing officer's determinations on the issues are not 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).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge