

APPEAL NO. 031767-s
FILED AUGUST 25, 2003

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 18, 2003. The disputed issue at the CCH was whether the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh quarter. The hearing officer resolved the disputed issue by deciding that the claimant is entitled to SIBs for the "fourth quarter." The appellant (self-insured) appeals, contending that the hearing officer erred in determining that the claimant met the good faith criterion for SIBs entitlement under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2)) (Rule 130.102(d)(2)) because it was not shown that the Texas Rehabilitation Commission (TRC) sponsored the General Equivalency Diploma (GED) classes attended by the claimant, in that the TRC did not fund those classes. The claimant responds, asserting that funding by the TRC is not required.

DECISION

Affirmed as reformed herein.

The issue at the CCH was whether the claimant is entitled to SIBs for the seventh quarter. The hearing officer made findings of fact in favor of the claimant for entitlement to seventh quarter SIBs, but made typographical errors in Conclusion of Law No. 3 and in her decision when she determined that the claimant is entitled to SIBs for the fourth quarter (although the dates for the seventh quarter are referenced). We reform the hearing officer's Conclusion of Law No. 3 and decision to reflect that the claimant is entitled to SIBs for the seventh quarter. We also reform Finding of Fact No. 1.g. to reflect that the parties stipulated that the qualifying period for the seventh quarter began on July 23, 2002, and ended on October 21, 2002.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the seventh quarter. 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. Rule 130.101(8) provides the following definition:

Full time vocational rehabilitation program - - Any program, provided by the [TRC] 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. (Emphasis added.)

It is undisputed that the claimant sustained a compensable injury on September 10, 1998, while working as a home health care provider; that she had two cervical spine surgeries as a result of her injury; that she reached maximum medical improvement with an impairment rating of 15% or greater; and that the qualifying period for the seventh quarter was from July 23 through October 21, 2002.

The claimant's treating doctor released the claimant to return to work with restrictions in February 2002. The treating doctor noted that the claimant would best be suited for sedentary work and that she should consult with the TRC about possible retraining.

The claimant applied for TRC services in February 2002. On April 25, 2002, the claimant entered into a TRC Vocational Rehabilitation Services Individualized Plan for Employment (IPE). The IPE provides that the employment goal is a clerical occupation; states the steps necessary to reach the employment goal, including, among other things, training to obtain a GED; states that certain services will be provided, arranged, or purchased for the claimant to become employed, including, among other things, GED preparation classes from April 25, 2002, through April 30, 2003; that the service provider for the GED classes will be (church); and that the method for obtaining the GED classes will be "arranged." Other services listed in the IPE are counseling, guidance, and job placement to be provided by a TRC counselor; psychotherapy sessions to be provided by a named individual, with the method of obtaining that service listed as "purchased"; and other job placement services to be provided by a named employment service, with the method of obtaining that service listed as "purchased." The IPE also states the claimant's responsibilities in achieving the employment goal, including participating in training.

The claimant said that she chose the church as the place to attend her GED classes on the advice of a friend, that she went to the church and was told that she needed a paper from the TRC to attend classes there (although others attended classes there who were not involved with TRC), and that the TRC made the arrangements for her to attend the GED classes at the church and gave her a paper to take to the church. The claimant also said that she attended the GED classes at the church during the qualifying period for the seventh quarter; that she had her second cervical surgery on September 6, 2002 (the qualifying period began on July 23, 2002); and that after her surgery, she would go to the church to pick up her course work, complete the course work at home, and return it to the church. The claimant said that the GED classes at the church were through (WS).

The claimant's TRC counselor wrote a letter to the church dated April 25, 2002, in which she verified that the claimant is a client of TRC and that the claimant would

benefit from GED courses to obtain her GED so that she can obtain employment. The claimant's TRC counselor wrote on August 9, 2002, that the claimant is an active TRC client currently participating in GED classes and that the claimant would participate in job placement services after getting her GED. The claimant's GED instructor wrote on August 13, 2002, that the claimant is enrolled in the GED program at the (county education department), and that the claimant is making progress towards achieving her GED. An October 2, 2002, letter from the Adult Education Division of the county education department explains that the claimant enrolled in GED classes on May 7, 2002, at the county education department/WS, and that to date the claimant had a total of 155 instructional hours.

From the claimant's testimony and the letters in evidence, it appears that the claimant attended the GED classes at the church, that the GED instructor was associated with the county department of education, and that the entity WS was somehow involved with the GED classes. It is not evident who, if anyone, paid for the claimant's GED classes, or if any payment was required. The claimant did not say she paid for them and the IPE notes that the GED classes at the church will be "arranged" as opposed to "purchased." It looks like it was a combined effort of the TRC, the church, the county education department, and the entity WS to give the claimant the opportunity to attend GED classes.

The self-insured appeals the following findings of fact:

FINDINGS OF FACT

3. During the seventh quarter qualifying period Claimant was enrolled in and successfully participating in a full time TRC sponsored program when she attended GED classes arranged for by TRC but not paid for by TRC.
4. Claimant's participation in the TRC sponsored program, which included the GED education during the qualifying period for the seventh quarter, constituted a good faith effort to find employment commensurate with her ability to work.

The self-insured states it is not disputed that the claimant was enrolled in and participating in a GED program during the qualifying period for the seventh quarter. However, the self-insured contends that the hearing officer erred in finding that the claimant was enrolled in a TRC-sponsored program during the qualifying period for the seventh quarter because it asserts that the Appeals Panel has defined sponsorship as requiring the providing of financial resources by the TRC, citing Texas Workers' Compensation Commission Appeal No. 010497-s, decided April 17, 2001, and Texas Workers' Compensation Commission Appeal No. 000121, decided March 3, 2000. The self-insured contends that the Appeals Panel has considered that funding by the TRC of a program is considered sponsorship.

While we do not disagree that actual funding of services by the TRC shows sponsorship by the TRC, we do disagree with the self-insured's contention that funding by the TRC is the only way that sponsorship by the TRC may be shown.

First, as pointed out by the claimant, the very definition of a full-time vocational rehabilitation program in Rule 130.101(8) provides that a vocational rehabilitation plan includes, among other things, "a description of the services to be provided or arranged," which evidences a clear intent on the part of the Texas Workers' Compensation Commission to include in a vocational rehabilitation plan services that the TRC can arrange for without having to actually pay for. This makes sense because any services the TRC can arrange for without having to "fund" itself will allow that agency to help more injured workers achieve their employment goals with what limited funds the TRC has to accomplish its purposes. We note that in Texas Workers' Compensation Commission Appeal No. 021247-s, decided July 8, 2002, the Appeals Panel held that a hearing officer erred in determining that a claimant was not enrolled in a vocational rehabilitation program sponsored by the TRC because the TRC had referred the claimant to the program in Oklahoma when the claimant moved to that state. The Appeals Panel stated "We disagree that the program TRC gave the claimant a referral to in Oklahoma was not a TRC-sponsored program."

Second, we disagree that the Appeals Panel has equated TRC sponsorship solely with funding by the TRC. In Appeal No. 010497-s, *supra* a hearing officer determined that a claimant had met the good faith criterion for SIBs entitlement under Rule 130.102(d)(2) based on findings of fact that during the relevant qualifying period the claimant had participated in a full time job-training program monitored by the TRC, and that the job-training program was not funded by the TRC because the claimant had previously exhausted all funds available to her through the TRC in another vocational rehabilitation program. The Appeals Panel reversed and rendered a decision that the claimant was not entitled to SIBs for the quarter in issue because the hearing officer erred in finding that the claimant satisfied the good faith attempt requirement by participating in a job-training program which was merely being "monitored" by, but not "sponsored" by, the TRC. The Appeals Panel held that "monitored" and "sponsored" are not synonymous. We do not read Appeal No. 010497-s as holding that sponsorship by the TRC can only be shown through funding by the TRC.

In Appeal No. 000121, it was undisputed that the claimant in that case was not enrolled in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period, but that he was attending drafting classes at a college during that period. The claimant had already exhausted his training budget with the TRC when he completed a TRC-sponsored training program in copy machine repair. The Appeals Panel reversed the hearing officer's decision that the claimant was entitled to SIBs for the quarter in issue and rendered a decision that the claimant was not entitled to SIBs for that quarter. In rendering a decision against the claimant, the Appeals Panel cited and quoted from Texas Workers' Compensation Commission Appeal No. 992483, decided December 20, 1999, in which a claimant was enrolled in college but his study "was not undertaken through or paid for through the TRC," and the Appeals Panel in

that case affirmed a hearing officer's decision that the claimant was not entitled to SIBs. The quoted language from Appeal No. 992483, reflects that the Appeals Panel was not holding that TRC sponsorship can only be established through TRC funding.

What is important in the instant case is that the claimant has an IPE with the TRC which provides that one of the necessary steps to achieve her employment goal of a clerical occupation is to have training to obtain her GED; that the IPE provides that the GED classes will be arranged; that the IPE provides that one of the claimant's responsibilities is to participate in training; and that the evidence, including the claimant's testimony and letters from the TRC and GED instructor, reflects that the claimant satisfactorily participated in the GED training during the relevant qualifying period. *Compare* Texas Workers' Compensation Commission Appeal No. 031795, decided August 21, 2003, where there was no evidence of a vocational rehabilitation plan. We hold that TRC sponsorship of a vocational rehabilitation program is not limited to funding of services by the TRC, but can also include services that the TRC arranges for in a vocational rehabilitation plan with no funding by the TRC.

As reformed herein, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1021 MAIN STREET
HOUSTON, TEXAS 77002.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge