

APPEAL NO. 041812-s
FILED SEPTEMBER 16, 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 June 23, 2004. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fourth and fifth quarters.

The appellant (carrier) appealed, contending that a court of appeals case has held that to meet the good faith requirement of Section 408.142(a)(4) the claimant must look for work every week of the qualifying period and that the claimant, in this case, was not satisfactorily participating in a Texas Rehabilitation Commission (TRC) program because she had missed some of her classes. The file does not contain a response from the claimant.

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). The only criterion at issue is the good faith requirement in Section 408.148(a)(4) and Rule 130.102(b)(2). The claimant contends that she has met the good faith requirement by complying with 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 vocational rehabilitation program sponsored by the TRC during the qualifying period. In this case the claimant provides documentation of her enrollment in a TRC program, her Individualized Plan for Employment (IPE) (which included the qualifying period), an amendment to the IPE where the TRC purchased an office automation program from GI (contract provider), an enrollment contract with the contract provider, and monthly progress reports. In addition there were written statements and testimony at the CCH from the contract provider's job connection coordinator and the claimant's TRC counselor regarding the claimant's enrollment and satisfactory participation in the full-time office automation rehabilitation program sponsored by the TRC.

The carrier cites the Amarillo Court of Appeals case of Teague v. Insurance Company of the State of Pennsylvania, 2004 Tex. App. 4806, decided May 27, 2004, contending that case "plainly states the requirement that a Claimant's good faith effort **must** involve a search for employment every week of the qualifying period, and nothing in the wording of § [sic Rule] 130.102(e) or elsewhere in § [sic Rule] 130.102(e) suggests that requirement may be excused or overridden by other factors." (Emphasis in the original.) We disagree with the carrier's contention. First, Rule 130.102(e) begins

with the qualifier that “[e]xcept as provided in subsection (d)(1), (2), (3), and (4) of [Rule 130.102].” That indicates to us that Rule 130.102(d)(2) is an exception to the requirement in Rule 130.102(e) to look for employment commensurate with his or her ability to work every week of the qualifying period. Second, the Teague, *supra*, case was a case where the injured employee sought to show a good faith effort by complying with the requirements of Rule 130.102(e). In that case the injured worker had documented 53 “job contacts” during the qualifying period but had not sought work during two weeks that she was out of state helping her ill child. The court held that nothing in Rule 130.102 suggests that the “every week” requirement in Rule 130.102(e) may be excused or overridden by other factors. However, that statement did not consider the exception at the beginning of Rule 130.102(e) which states “[e]xcept as provided in subsection (d)(1), (2), (3), and (4).” The court does not address Rule 130.102(d)(2) or the TRC except to generally mention cooperation with the TRC as part of Rule 130.102(e). We do not read Teague to say that the only way to meet the good faith effort to obtain employment is to comply with Rule 130.102(e) and ignore the exceptions at the beginning of that subsection. We hold the Teague case as being totally inapplicable to the instant case.

The carrier also contends that the claimant failed to satisfactorily participate in the TRC program because she failed (in the carrier’s opinion) to meet the requirements of the IPE and because “she did not regularly attend classes” (i.e. she missed some classes). Both the contract provider and the TRC counselor testified that they were aware of the claimant’s missed classes and that the claimant’s effort constituted satisfactory participation in the TRC program with the contract provider. The Appeals Panel has held that the best evidence of satisfactory participation will be that coming directly from the TRC. Texas Workers’ Compensation Commission Appeal No. 010483-s, decided April 20, 2001. In Texas Workers’ Compensation Commission Appeal No. 012351, decided November 13, 2001, we indicated that “progress reports prepared by the TRC documenting the claimant’s satisfactory participation in a TRC-sponsored program during the period in question” may sufficiently support the hearing officer’s determination that the claimant satisfied the good faith requirement for entitlement to SIBs. In any event what constitutes satisfactory participation is a factual determination for the hearing officer to resolve. In this case we hold that the hearing officer’s determination is sufficiently supported by the evidence.

We have reviewed the complained-of determinations and conclude that the hearing officer’s determinations 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).

We affirm the hearing officer's decision and order.

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

**PRENTICE HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge