

APPEAL NO. 990020

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 9, 1998. With respect to the issues before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the first and second compensable quarters; that she is not entitled to SIBS for the third and fourth quarters; that the claimant timely filed a Statement of Employment Status (TWCC-52) for the second and third quarters of SIBS; and that the claimant has not permanently lost entitlement to SIBS pursuant to Section 408.146(c). In its appeal, the appellant (carrier) asserts error in the hearing officer's determination that the claimant timely filed her TWCC-52 for the second quarter. The carrier maintains that it is relieved from liability for second quarter SIBS because the claimant's TWCC-52 did not list her earnings during the filing period and as such, it should be considered as not having been timely filed. The carrier did not appeal the determinations that the claimant is entitled to first quarter SIBS or that the claimant has not permanently lost entitlement to future SIBS. The appeals file does not include a response from the claimant. The claimant also did not appeal the hearing officer's determinations that she is not entitled to third and fourth quarter SIBS.

DECISION

Affirmed.

Due to the limited nature of the single issue before us on appeal, our factual recitation will be limited to those facts most germane to that issue. The parties stipulated that the claimant sustained a compensable injury to her right wrist, left leg, and low back, which resulted in a 16% impairment rating; that she did not commute her impairment income benefits; that the filing period for the first quarter of SIBS began August 1, 1997; and that the claimant's average weekly wage is \$219.58. As noted above, only the question of whether the claimant timely filed her TWCC-52 for the second quarter is before us on appeal. The second quarter of SIBS ran from January 30 to April 30, 1998, with a corresponding filing period of October 31, 1997, to January 29, 1998. In an unappealed fact finding, the hearing officer found that:

No one knew what the dates of the compensable quarters and the filing periods would be, or even whether the Claimant would be eligible for [SIBS], until after the designated doctor determined her 16% impairment rating on May 7, 1998.

The claimant completed a TWCC-52 for the second quarter on May 28, 1997. On her initial TWCC-52 the claimant did not list any wage information. The claimant acknowledged at the hearing that throughout the filing period for the second quarter she earned \$70.00 per week in a baby sitting position. The claimant stated that shortly after she completed her application for the second quarter of SIBS, she went to a Texas Workers' Compensation Commission (Commission) field office and learned that she had to report her earnings from

the baby sitting. Thus, she stated that a Commission employee assisted her in completing an amended TWCC-52 which included her earnings in the filing period.

The carrier argues that contrary to the hearing officer's findings, the claimant did not file her application for second quarter SIBS in May 1998 because "an application that does not contain proper wage information is not considered an application as a matter of law." In its appeal, the carrier acknowledged that it received the claimant's amended TWCC-52 on or about July 27, 1998, which was well before the October 15, 1998, benefit review conference (BRC). The carrier relies on Texas Workers' Compensation Commission Appeal No. 941629, decided January 20, 1995, and Texas Workers' Compensation Commission Appeal No. 960025, decided February 15, 1996; however, we cannot agree that those cases, which considered a claimant's failure to disclose earnings during the filing period, provide support for the carrier's position. In Texas Workers' Compensation Commission Appeal No. 980153, decided March 11, 1998, we noted that an incomplete TWCC-52 should only be equated to a non-filing in instances of "clear and intentional . . . nondisclosure," as opposed to cases where the omitted information is brought forward at a later date. See also Texas Workers' Compensation Commission Appeal No. 970435, decided April 24, 1997 (where we similarly cautioned against "wholesale application" of Appeal No. 941629, *supra*, noting that the omission should be "akin to fraud"). There is no evidence that the claimant's failure to include the wage information on her initial TWCC-52 was a "clear and intentional nondisclosure." To the contrary, in this instance, the claimant amended her TWCC-52 and disclosed the information to the carrier within two months of having filed her initial application and some three months prior to the BRC. Accordingly, the hearing officer did not err in determining that the claimant's TWCC-52 was timely filed and that the carrier is not relieved of liability for second quarter SIBS in this case.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge