

APPEAL NO. 991276

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 May 7, 1999. The single issue at the CCH was the appellant's (claimant) entitlement to supplemental income benefits (SIBS) for the second compensable quarter. The hearing officer determined that the claimant was entitled to SIBS for the second quarter (second quarter ran from February 11, 1999, to May 12, 1999) beginning on March 10, 1999, the date that pertinent wage and job search information was provided by the claimant to the respondent (carrier). Claimant appeals the beginning date of the second quarter of SIBS, urging that the wage information that he failed to provide when he initially filed his Statement of Employment Status (TWCC-52) was because of his depression which affected his daily functioning. The carrier responds that it is not appealing the adverse decision that the claimant was entitled to SIBS for the second quarter, but that it agrees with the hearing officer's decision, as supported by the evidence, that the SIBS for the second quarter were only owed from the date of March 10, 1999, when the claimant provided wage and job search data previously undisclosed.

DECISION

Affirmed.

During the filing period (November 12, 1998, to February 10, 1999), the claimant was attending school to become a registered nurse (RN), was employed for several periods of time at several different jobs, sought a couple of other employment opportunities, and contacted his former employer and union. He had been released to medium level working capacity. When he filed his TWCC-52 on January 28, 1999, for second quarter SIBS, he only listed wages of \$210.00 earned during the period and indicated he returned to work on January 12, 1999. When questioned at the CCH why he did not show wages of \$1,101.00 paid to him for the period November 11, 1998, to January 8, 1999, and which had been paid to him prior to filing the TWCC-52 on January 28, 1999, the claimant stated that he did not know why he did not list it. He also did not list an adult day care center where he applied for a position and, when asked why, stated that he was "in a hurry and I guess I wasn't thinking." The claimant provided a letter to the carrier dated March 10, 1999, in which he disclosed the additional wages and the application to the adult day care center. The claimant, although acknowledging his participation in college courses leading to a RN degree, indicated that he was diagnosed as clinically depressed and this resulted in such things as not mentioning the wages earned. Although contested by the carrier, the hearing officer found that the claimant established a good faith effort to seek employment commensurate with his ability to work. However, the hearing officer also found that the claimant did not provide complete information of his wages and efforts for the quarter in issue until March 10, 1999, approximately one month after the beginning of the second quarter, and that his TWCC-52 was incomplete when filed. She determined that the claimant was only entitled to second quarter SIBS beginning on March 10, 1999.

Certainly, not all errors or omissions in an initial filing of a TWCC-52 form result in "a failure to file" (Section 408.143(c)), thus relieving a carrier of liability for the particular SIBS period involved (Texas Workers' Compensation Commission Appeal No. 980153, decided March 11, 1998); however, where there is an intentional omission or concealment of significant data such as a major portion of wages earned and known at the time of the filing of the TWCC-52, the result can be a failure to file until correct data is provided to the carrier, in this case March 10, 1999. Texas Workers' Compensation Commission Appeal No. 941629, decided January 20, 1995; Texas Workers' Compensation Commission Appeal No. 961438, decided September 9, 1996; Texas Workers' Compensation Commission Appeal No. 960730, decided May 28, 1996; Texas Workers' Compensation Commission Appeal No. 961799, decided October 28, 1996. The hearing officer considered the evidence and concluded that the beginning date for the payment of second quarter SIBS was March 10, 1999, the date that the claimant provided the particularly significant data concerning a major portion of his wages earned during the period as well as added job search efforts. Under our standard of review (Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992), we cannot conclude her determination was against the great weight and preponderance of the evidence or was an incorrect application of law. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge