

APPEAL NO. 022206-s
FILED OCTOBER 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on July 26, 2002, the hearing officer found that the appellant (claimant) made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the first quarter by participating in a full-time retraining program sponsored by the Texas Rehabilitation Commission (TRC); that the claimant's inability to obtain employment during the qualifying period for the first quarter is a direct result of the impairment from the compensable injury; that the claimant is receiving supplemental income benefits (SIBs) under his prior claim; that the claimant is currently receiving income replacement benefits; and that the claimant may not receive double income replacement benefits under Texas Workers' Compensation Commission Appeal No. 991911, decided October 15, 1999. Based on these findings, the hearing officer concluded that the claimant "may not receive [SIBs] for the first quarter since the time period was fully compensated under claim (docket No. 1)" and that the claimant "is not entitled to [SIBs] for the first quarter." The claimant has appealed, asserting both that the evidence does not establish that he has actually been paid SIBs under his prior claim and that even if he cannot be paid SIBs at the same time for his two claims, the hearing officer erred in concluding that he is "not entitled" to SIBs under his second claim and that this error, if repeated for another three quarters, could result in his permanently losing entitlement to SIBs under his later claim. The file does not contain a response from the respondent (carrier).

DECISION

Reversed and a new decision rendered.

The sole issue before the hearing officer in this claim, (docket No. 2) with an injury date of _____, was whether the claimant is "entitled" to SIBs for the first quarter. The parties stipulated that the first SIBs quarter for this claim started on March 26 and ended June 24, 2002; that the qualifying period for that quarter started on December 12, 2001, and ended on March 12, 2002; that the fifth SIBs quarter for the claim under Docket No. 1 with a date of injury of _____, started on January 8 and ended on April 8, 2002, with the qualifying period starting on September 24 and ending on December 24, 2001, "and [SIBs] were paid"; that the sixth SIBs quarter for the claim under Docket No. 1 started on April 9 and ended on July 8, 2002, with the qualifying period starting on December 25, 2001, and ending on March 25, 2002, "and [SIBs] were paid"; and that the claimant is a full-time participant in a retraining program sponsored by the TRC.

The claimant's Application for [SIBs] (TWCC-52) forms for the fifth and sixth quarters, and additional documentary evidence, reflect that the claimant was attending college classes under the auspices of the TRC during the qualifying periods for those

quarters and that the carrier determined that the claimant was entitled to SIBs for those quarters. The claimant's challenges of the findings that he "is receiving [SIBs] under his prior claim" and that he "is currently receiving income replacement benefits" are not well taken, given that he stipulated that SIBs were paid for the fifth and sixth quarters, and those findings are affirmed. Findings of Fact Nos. 3 and 4 to the effect that the claimant would not be able to return to his prior employment due to his impairment from either or both of his compensable injuries and that his unemployment is a direct result of his impairment from the compensable injury have not been appealed and have become final. Section 410.169.

The crux of the remaining issue on appeal, an issue of law, is whether the claimant is not "entitled" to SIBs for the first SIBs quarter of his later compensable injury for the reason that he cannot receive SIBs concurrently from both injuries. In Finding of Fact No. 7, the hearing officer found that the claimant "may not receive double payment of income replacement benefits per Texas Workers' Compensation Commission Appeal No. 991911" and in Conclusion of Law No. 4 the hearing officer concluded that the claimant "may not receive [SIBs] for the first quarter since the time period was fully compensated under claim (docket No. 1)." This finding and this conclusion are legally correct based on several Appeals Panel decisions. See, e.g., Texas Workers' Compensation Commission Appeal No. 93989, decided December 16, 1993; Texas Workers' Compensation Commission Appeal No. 972018, decided November 17, 1997 (Unpublished); Texas Workers' Compensation Commission Appeal No. 990849, decided May 26, 1999; and Texas Workers' Compensation Commission Appeal No. 991911, *supra*. Compare Texas Workers' Compensation Commission Appeal No. 000572, decided May 5, 2000.

The hearing officer concluded in Conclusion of Law No. 3, and also stated in the "Decision" portion of the Decision and Order, that the claimant "is not entitled to [SIBs] for the first quarter." The claimant contends that, based on the findings, the hearing officer offered no explanation in the Decision and Order for this conclusion. However, it may well be that the hearing officer was guided by certain statements in several of our decisions which could be read to use the terms "entitled" and "eligible" interchangeably. The decision in Appeal No. 93989, *supra*, in which the Appeals Panel dealt for the first time with the issue of concurrent SIBs payments from different injuries, stated that the claimant in that case "would not be eligible for more than one SIBS payment at a time"; that "[w]e do not view the SIBS provisions as allowing for double payments to the same individual at the same time, even if there were two or more injuries or accumulation of injuries"; and that "[j]ust as we held in Appeal No. 93794 [Texas Workers' Compensation Commission Appeal No. 93794, decided October 20, 1993], where the carrier was not liable to pay [temporary income benefits] twice for two different injuries for the same time period, this carrier is not liable to pay SIBS twice, even if the two injuries were to each reach the 15% threshold." However, the decision in Appeal No. 972018, *supra*, another case involving SIBs and two injuries, after first recognizing that Sections 408.142 and 408.143 contain the requirements for entitlement to SIBs, goes on to state that "[a] claimant may be eligible for SIBS for two separate injuries but he or she would not be entitled for more than one SIBS payment at a time," going on to cite the decision

in Appeal No. 93989, *supra*. That statement was repeated with approval in Appeal No. 990849, *supra*, and in Appeal No. 991911, *supra*.

In these decisions, the foci of the appealed issues did not center on an explication of the difference between being entitled to SIBs on the one hand, as provided for in Sections 408.142 and 408.143, and, on the other hand, being eligible to receive a SIBs payment. Eligibility to receive a SIBs payment can be precluded by a claimant's having received the payment of SIBs during the same period resulting from impairment from another injury. Eligibility to receive a SIBs payment could also be called into question by other factors such as, for example, being incarcerated. Accordingly, we reverse Conclusion of Law No. 3 and the "Decision" portion of the Decision and Order and hold that the claimant in this case is entitled to SIBs for the first quarter but is not eligible to receive the payment of SIBs for that quarter.

The decision and order of the hearing officer is reversed and a new decision is rendered that the claimant is entitled to SIBs for the first quarter but is not eligible to receive the SIBs payment for that quarter.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge