

APPEAL NO. 030819  
FILED MAY 28, 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 was held on March 25, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appealed the hearing officer's decision. No response was received from the respondent (carrier).

DECISION

The hearing officer's decision is reversed and remanded.

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 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 second quarter. The parties stipulated that the qualifying period for the second quarter was from September 7 through December 6, 2002. Rule 130.102(e), provides, in part, that an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. It is undisputed that the claimant had some ability to work during the qualifying period for the second quarter, and that the claimant had not returned to work during that qualifying period.

The claimant appeals Finding of Fact No. 3 that the claimant failed to document any job search efforts during the 13th week of the qualifying period, that is, for the week of November 30 through December 6, 2002; Finding of Fact No. 5 that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the second quarter qualifying period; and Conclusion of Law No. 3 that the claimant is not entitled to SIBs for the second quarter.

The claimant contends that the hearing officer must have overlooked page 9 (the last page) of Claimant's Exhibit No. 1, which on its face purports to document three employment contacts during the period of December 2 through December 6, 2002, which was during the 13th week of the qualifying period. Since it appears from the hearing officer's decision that the only reason he found that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work was that she did not document a job search during the 13th week of the qualifying period, and since it appears from the record that there may be a documented job search during the 13th week, we believe that it is appropriate to remand the case to the hearing officer for further consideration of the evidence, especially page 9 (the last page) of Claimant's Exhibit No. 1, and for the hearing officer to make findings of fact, conclusions of law,

and a decision on the disputed issue of entitlement to SIBs for the second quarter after further consideration of the evidence.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

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

**LEO MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge