

APPEAL NO. 061781  
FILED OCTOBER 2, 2006

This appeal arises pursuant to Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 20, 2006. The hearing officer determined that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the 8th quarter, that the claimant is entitled to SIBs for the 9th, 10th, 11th and 12th quarters and that the appellant (carrier) did not waive the right to contest the claimant's entitlement to SIBs for the 8th, 10th and 11th quarters by failing to timely request a benefit review conference. The hearing officer's determinations regarding the 8th, 9th, 10th and 12th quarters and the carrier waiver issue have not been appealed and have become final pursuant to Section 410.169.

The carrier appeals the entitlement to SIBs for the 11th quarter on the basis that the claimant had failed to look for employment every week of the qualifying period and document her job search efforts. The claimant responded, asserting that she had been enrolled in and satisfactorily participated in a full-time vocational rehabilitation program (VRP) sponsored by the Department of Assistive and Rehabilitation Services (DARS) during the qualifying period.

DECISION

Reversed and a new decision rendered.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, with an impairment rating (IR) of 15% or more, that no portion of impairment income benefits had been commuted and that the qualifying period for the 11th quarter was from August 20 through November 18, 2005. The hearing officer's determination that the claimant's unemployment during the qualifying period for the 11th quarter "was a direct result of [her] impairment" was not appealed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142. Section 408.142 as amended by the 79th Legislature, effective September 1, 2005, references the requirements of Section 408.1415 regarding work search compliance standards. Section 408.1415(a) states that the [Texas Department of Insurance, Division of Workers' Compensation] (Division) Commissioner by rule shall adopt compliance standards for SIBs recipients. In that no such rules have been implemented as of this date, we refer to the eligibility criteria for SIBs entitlement in 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Commissioner's Bulletin No. B-0058-05 dated September 23, 2005, provides that until new SIBs rules are adopted, the Division's Rules 130.100-130.110 govern the eligibility and payment of SIBs and remain in effect until they are amended, repealed, or modified by the Commissioner of Workers' Compensation.

The claimant proceeded on dual theories for entitlement to SIBs based on enrollment and satisfactory participation in a full-time VRP sponsored by DARS and a

good faith effort to obtain employment through job search efforts. 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 VRP sponsored by the Texas Rehabilitation Commission (TRC) (now part of DARS) during the qualifying period. Although a DAR'S counselor testified that the claimant had been enrolled in and satisfactorily participated in a full-time VRP, there was no documentation to support that testimony with regard to the qualifying period for the 11th quarter and the Individual Plan for Employment in evidence was dated after the qualifying period in question with the dates of service to begin on November 30, 2005, to December 30, 2006 (after the qualifying period). The hearing officer, in his Background Information commented that during the qualifying period for the 11th quarter the claimant "did not participate in any kind of full time rehabilitation program sponsored by the . . . (DARS)." We hold that the claimant did not meet the requirements of Rule 130.102(d)(2).

Rule 130.102(d)(5) 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 provided sufficient documentation as described in Rule 130.102(e) to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in Subsection (d), (1), (2), (3) and (4) of Rule 130.102, 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, and that in determining whether or not the injured employee has made a good faith effort to obtain employment under subsection (d)(5), the reviewing authority shall consider the information provided by the injured employee, which may include, but is not limited to information listed in subsection (e)(1)-(11). The qualifying period for the 11th quarter, as stipulated, began on August 20, 2005, and the claimant documented four job searches during the initial week of the qualifying period (11th quarter) August 20 through August 26, 2005. The claimant failed to document any job searches during the second week of the qualifying period, August 27 through September 2, 2005. The evidence does not reflect another documented job search until September 5, 2005, in the third week of the qualifying period. The hearing officer, in the Background Information, commented that the "Claimant documented that she looked for work in each week during the qualifying periods . . . and eleventh quarters." We hold that comment to be factually incorrect. We further hold that the claimant failed to document any job search efforts during the second week of the 11th quarter qualifying period and therefore did not meet the requirements of Rule 130.102(e).

Accordingly, we reverse the hearing officer's decision that the claimant is entitled to SIBs for the 11th quarter and render a new decision that the claimant is not entitled to SIBs for the 11th quarter.

The true corporate name of the insurance carrier is **SECURITY INSURANCE COMPANY OF HARTFORD** successor in interest to **FIRE & CASUALTY INSURANCE COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge