

APPEAL NO. 062315  
FILED JANUARY 11, 2007

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 October 2, 2006. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 15th and 16th quarters. The appellant (carrier) appealed, disputing the hearing officer's determination that the claimant is entitled to SIBs for the 15th quarter. The claimant responded, urging affirmance. The hearing officer's determination that the claimant is entitled to SIBs for the 16th quarter was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that the claimant has an impairment rating of 15% or more; that the claimant has not commuted any portion of the impairment income benefits; that the claimant has not worked during any part of the qualifying period for the 15th SIBs quarter; and that the qualifying period for the 15th quarter begins on March 9 and ends on June 7, 2006.

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Rules 130.100-130.110 govern the eligibility and payment of SIBs and remain in effect until they are amended, repealed, or modified by the Commissioner of Workers' Compensation.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 of entitlement to SIBs for the 15th quarter, based on a total inability to work and a good faith effort to obtain employment through job search efforts. Rule 130.102(d)(4) 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 unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. In the Background Information portion of the decision the hearing officer noted that although there were several reports from various

doctors who were of the opinion that the claimant was unable to work, the reports did not constitute a sufficient narrative specifically explaining how the claimant's injury causes a total inability to work. However, it is clear from his discussion, that the hearing officer found the claimant entitled to SIBs for the 15th quarter on the basis of a good faith effort to obtain employment through job search efforts. The carrier appeals, arguing the evidence showed that the claimant failed to make a job search in each week of the qualifying period for the 15th SIBs quarter.

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 15th quarter, as stipulated, began on March 9, 2006, and the claimant documented two job searches during each of the first 7 weeks of the qualifying period of the 15th SIBs quarter. During the 8th week of the qualifying period for the 15th SIBs quarter, the claimant documented one job search (on April 27, 2006). However, the claimant failed to document any job searches during the 9th and 10th weeks of the qualifying period, May 4 through May 17, 2006. The evidence does not reflect another documented job search until May 19, 2006, in the 11th week of the qualifying period. The hearing officer, in the Background Information, commented that the "record contains evidence of job searches by the claimant for sedentary positions in each week of the qualifying periods for the 15th and 16th [SIBs quarters]." We hold that comment to be factually incorrect. We further hold that the claimant failed to document any job search efforts during the 9th and 10th weeks of the 15th 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 15th quarter and render a new decision that the claimant is not entitled to SIBs for the 15th quarter.

According to the information provided by the carrier, the true corporate name of the insurance carrier is **SECURITY INSURANCE COMPANY OF HARTFORD AS SUCCESSOR IN INTEREST TO THE CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

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

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge