

APPEAL NO. 100296
FILED MAY 4, 2010

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 February 18, 2010. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to receive supplemental income benefits (SIBs) for the first quarter, August 4 through November 2, 2009. The claimant appealed, disputing the hearing officer's determination that the claimant is not entitled to SIBs for the first quarter. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

It was undisputed that the claimant sustained a compensable injury on _____, the claimant had an impairment rating of 15%, and the qualifying period for the first quarter was from April 22 through July 21, 2009. 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. 28 TEX. ADMIN. CODE § 130.101(4) (Rule 130.101(4)) provides in part that a qualifying period that begins on or after July 1, 2009, is subject to the provisions of this subchapter, and a qualifying period that begins prior to July 1, 2009, remains subject to the rules in effect on the date the qualifying period begins. The qualifying period for the first quarter of SIBs began prior to July 1, 2009, therefore eligibility criteria for SIBs entitlement is governed by the Division's "old" SIBs rules, Rules 130.100-130.110, in effect prior to July 1, 2009.

The claimant testified that after his injury he received training to be a tankerman and began working for another employer as a tankerman. In evidence are payroll records that reflect the claimant worked as a tankerman beginning in October 2007 until May 5, 2009. There was conflicting evidence regarding why the claimant's employment as a tankerman was terminated. The claimant then performed various job searches in an attempt to secure employment but was unsuccessful. The hearing officer determined that the claimant is not entitled to receive SIBs for the first quarter. The hearing officer found that during the qualifying period preceding the first SIBs quarter, the claimant did not actively perform work search efforts documented by job applications. The hearing officer referenced Rule 130.102(d)(1)(D) in her discussion stating it required that searches must be documented by job applications, specifically referencing the "new" rules.¹ It is clear that the hearing officer analyzed this case under

¹ See Appeals Panel Decision (APD) 100229-s, decided April 30, 2010.

the new rules which do not apply to this case because the qualifying period began prior to July 1, 2009.

We note that with regard to Rule 130.102(d)(1), which 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 returned to work in a position which is relatively equal to the injured employee's ability to work, the Appeals Panel stated in APD 001579, decided August 17, 2000, that:

The claimant, however, relies on Rule 130.102(d)(1) to meet the good faith job search requirement. That provision establishes that a claimant who has returned during the qualifying period to a position relatively equal to his ability to work has made the required good faith job search. In [APD] 000321, decided March 29, 2000, we observed that Rule 130.102 creates various ways to fulfill the good faith job search requirement and that subsection (d)(1) does not require that the claimant must work in this position during each week of the filing period or otherwise document a job search in those weeks claimant did not work.

In APD 032127, decided October 1, 2003, the Appeals Panel stated: "we have held that if the claimant complies with Rule 130.102(d)(1) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2)."

It is clear that the hearing officer based her determination of the disputed SIBs issue on the "new" SIBs rules which did not apply in this case. Therefore, we reverse the hearing officer's determination that the claimant is not entitled to receive SIBs for the first quarter and remand this case to the hearing officer to make a determination regarding the claimant's entitlement of SIBs for the first quarter applying the rules effective during the qualifying period at issue.

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 Division, 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. See APD 060721, decided June 12, 2006.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge