

APPEAL NO. 100467-s
FILED JUNE 18, 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 March 29, 2010. The disputed issue before the hearing officer was:

Is the appellant (claimant) entitled to supplemental income benefits (SIBs) for the first quarter, from December 3, 2009, through March 3, 2010?

The hearing officer determined that the claimant is not entitled to SIBs for the first quarter, from December 3, 2009, through March 3, 2010. The claimant appealed the hearing officer's SIBs determination. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

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 §§ 130.100-130.109 (Rules 130.100-130.109), effective July 1, 2009, govern the eligibility of SIBs. 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 parties stipulated that: (1) on _____, the claimant sustained a compensable injury that resulted in an impairment rating of 15% or greater; (2) the claimant did not commute any portion of his impairment income benefits; (3) the qualifying period for the first quarter of SIBs was from August 21 through November 19, 2009; and (4) during the qualifying period for the first quarter of SIBs the claimant was unemployed. The claimant's theory of entitlement to SIBs for the first quarter is based on an active work search effort, by making a minimum number of three work search contacts, every week of the qualifying period in dispute.¹

¹ In an unappealed finding of fact, the hearing officer determined that the claimant's impairment precluded his return to employment at a job with the same or substantially the same physical requirements as his pre-injury employment and that the claimant's unemployment during the qualifying period was a direct result of his impairment from the compensable injury.

Section 408.1415(a)(3) provides in part that to be eligible to receive SIBs, a recipient must provide evidence satisfactory to the Division of active work search efforts documented by job applications submitted by the recipient. Section 408.1415(b)(2) provides that in adopting rules under this section, the commissioner shall define the number of job applications required to be submitted by a recipient to satisfy the work search requirements. Rule 130.102(d)(1) provides, in pertinent part, that an injured employee demonstrates an active effort to obtain employment by meeting at least the following work search requirement each week during the entire qualifying period: (D) has performed active work search efforts documented by job applications. Rule 130.102(f) provides that as provided in subsection 130.102(d)(1)(C) and (D), regarding active participation in work search efforts and active work search efforts, an injured employee shall provide documentation sufficient to establish that he or she has, each week during the qualifying period, made the minimum number of job applications and or work search contacts consistent with the work search contacts established by the Texas Workforce Commission (TWC) which are required for unemployment compensation in the injured employee's county of residence pursuant to the TWC Local Workforce Development Board requirements. If the required number of work search contacts changes during a qualifying period, the lesser number of work search contacts shall be the required minimum number of contacts for that period. If residing out of state, the minimum number of work search contacts required will be the number required by the public employment service in accordance with applicable unemployment compensation laws for the injured employee's place of residence.

Minimum number of work searches

The hearing officer did not make a finding regarding the minimum number of work search contacts required for the claimant's county of residence for the qualifying period in dispute. It is undisputed that the claimant's county of residence on the first day of the qualifying period was in (County A), Texas. The claimant testified that he moved to (State) during the qualifying period in dispute. In evidence is a printout of the Division's website entitled "Changes to the [SIBs] Application Process" referencing the minimum required work searches by county as of April 24, 2009, and it lists for (County A) three minimum required work searches. There is no other evidence that the minimum required work searches for (County A) is other than three, or that the number required changed during the qualifying period in dispute. In evidence is an email dated October 9, 2009, from (Ms. H) ([Ms. H]@[email address]) responding to the claimant's inquiry regarding minimum number of job searches for (County B), (State) Ms. H responded by email that "(t)he work search is three for (County B)."

The preamble to Rule 130.102 states that the language of Rule 130.102(f) provides that "the injured employee will be required to make job contacts based on the lesser of the number required on the first day of the qualifying period or the newly established number. Similarly, if the number of work search contacts provided on the application for SIBs differs from the actual number of work search contacts required on the first day of the qualifying period, the lesser number of work search contacts will apply." (34 Tex. Reg. 2144, 2009). Under the facts of this case, the evidence supports

that the minimum required work searches in the claimant's county of residence is three for the qualifying period in dispute.

Rule 130.102(d)(1)(D) - Performed Active Work Search Efforts Documented by Job Applications

Rule 130.102(d)(1) provides, in pertinent part, that an injured employee demonstrates an active effort to obtain employment by meeting at least the following work search requirement each week during the entire qualifying period: (D) has performed active work search efforts documented by job applications. In evidence is an Application for [SIBs] (DWC-52) for the first quarter of SIBs, which lists that the claimant made a minimum of three work searches each week, for the qualifying period in dispute, and attached a detailed job search listing that shows the employer's name and contact information for each of the work searches for the qualifying period in dispute.

In the Background Information section of the decision, the hearing officer states that “[a]part from notations in his contact log, [c]laimant failed to offer any evidence of the job applications or resumes other than those scattered confirmations.” The hearing officer found that the claimant did not submit any job applications to document an active job search during each week of the qualifying period for the first quarter of SIBs. In Appeals Panel Decision 100229-s, decided April 30, 2010, the Appeals Panel cited that the preamble to Rule 130.102(d)(1)(D) which clarifies that “work search efforts” encompass both job applications and work search contacts as described by TWC rules. In the instant case, the DWC-52 for the first quarter of SIBs in evidence reflects that the claimant met the work search efforts requirement by making at least three job applications and work search contacts for each week during the entire qualifying period in dispute. Accordingly, we reverse the hearing officer's decision that the claimant is not entitled to SIBs for the first quarter and we render a new decision that the claimant is entitled to SIBs for the first quarter.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge