

APPEAL NO. 100633  
FILED JULY 9, 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 (CCH) was held on April 20, 2010. With regard to the only issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th quarter, January 16 through April 16, 2010.

The claimant appealed, contending that she met the work search requirements of 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) by actively participating in a vocational rehabilitation program (VRP) provided by the Texas Department of Assistive and Rehabilitative Services (Rule 130.102(d)(1)(B)) and had performed active work search efforts documented by job applications (Rule 130.102(d)(1)(D)). 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. 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) the claimant sustained a compensable injury with an 18% impairment rating on \_\_\_\_\_; (2) the claimant did not commute any portion of her impairment income benefits; (3) the qualifying period for the 11th quarter of SIBs began on October 4, 2009, and ended on January 2, 2010; and (4) the minimum number of work search contacts required pursuant to Rule 130.102(f) during the 11th quarter qualifying period was 5 per week.

One of the claimant's theories of entitlement to SIBs for the 11th quarter is based on an active work search effort every week of the qualifying period in dispute. 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 in part, 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.

The preamble to Rule 130.102 discusses Rule 130.102(f), Work Search Efforts, and states that “[t]he new subsection (f) includes language regarding the required documentation an injured employee must provide to sufficiently establish active participation in work search efforts and active work search efforts” and that “[a]s a result of multiple comments received seeking clarification, language was added to subsection (f) to clarify that work search efforts would be consistent with job applications or the work search contacts established by TWC.” (34 Tex. Reg. 2139, 2009). Further, the preamble states that “[a]mendments also add language to subsection (f) to clarify that work search efforts are consistent with job applications or the work search contacts established by TWC and that if the work search requirements changed during a qualifying period, the injured employee would be responsible for the lesser of the two requirements.” (34 Tex. Reg. 2140, 2009).

The preamble to Rule 130.102(d)(1)(D) clarifies that “work search efforts” encompass both job applications and work search contacts as described by TWC rules.<sup>1</sup> (34 Tex. Reg. 2145, 2009). Further, the following public comment and Division response to Rule 130.102(d)(1)(D), states:

Comment: Commenter requests clarification of the phrase “has performed active work search efforts documented by job applications” that requires an injured employee, who engages in a job search outside of TWC in an effort to establish SIBs entitlement, to document those work search efforts by submitting completed job applications and that other job search activities will not be sufficient to establish SIBs entitlement.

Agency Response: This Division clarifies that, as set forth in adopted § 130.102(f), “work search efforts” encompasses both job applications and work search contacts as described by the TWC rules.

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<sup>1</sup> The preamble states that TWC has implemented rules and provides guidelines that describe the types of activities that may constitute a work search contact. See 40 Texas Administrative Code (TAC) § 815.28. (34 Tex. Reg. 2139, 2009). 40 TAC § 815.28(b)(4) provides examples of the types of activities that may constitute a work search contact for purposes of a productive search for suitable work.

In evidence is an Application for [SIBs] (DWC-52) for the 11th quarter of SIBs, which lists that the claimant made 5 work searches each week (and 6 in the 13th week), totaling 66 work searches. The Detailed Job Search/Employer Contact Log (DWC-052) shows the employer's name, address and telephone number, how the contact was made, the person contacted and description of the job applied for. The DWC-052 also indicates the claimant completed applications with 15 of the employers. A carrier exhibit indicates that all contact persons were legitimate. The hearing officer, in the Background Information, notes that the claimant testified that "her job search method was to drive to a mall or shopping center in her area and go door to door seeking work, and she acknowledged this meant she would make multiple contacts on the same day" although her DWC-052 only showed one contact per day each week.

The hearing officer, both at the CCH on the record and in the Background Information of his decision makes clear that he believed the claimant made the job contacts listed on the DWC-052, stating "it was pretty clear [c]laimant made the contacts." The hearing officer nonetheless stated that while the claimant documented 66 job search contacts during the qualifying period "she submitted a job application in connection with only 13<sup>[2]</sup> of the contacts [and therefore] [s]he failed to demonstrate an active effort to obtain employment under Rule 130.102(d)(1) . . . (D)."

This case is substantially identical with Appeals Panel Decision (APD) 100229-s, decided April 30, 2010, where an injured worker made 65 work search efforts, but because the injured worker made only 5 job applications the hearing officer found the injured worker did not meet the requirements of Rule 130.102(d)(1)(D). The Appeals Panel reversed the hearing officer's decision stating:

Although Rule 130.102(d)(1)(D) requires that the injured employee for each week during the entire qualifying period "performed active work search efforts documented by job applications," the preamble to Rule 130.102(d)(1)(D) clarifies that "work search efforts" encompass both job applications and work search contacts as described by TWC rules. The DWC-52 for the 10th quarter of SIBs in evidence, along with the claimant's testimony, reflects that the claimant met the work search efforts requirement by making job applications and work search contacts for each week during the entire qualifying period in dispute.

The carrier in its response seeks to distinguish APD 100229-s, *supra*, from the instant case stating that in APD 100229-s the "issue was whether the new SIBs rules regarding work search efforts can be satisfied by both job contacts and applications or only the latter." The carrier alleges that in the instant case the claimant failed to prove with credible evidence that she made the required number of contacts or applications each week of the qualifying period. We disagree. As noted previously, the hearing officer clearly believed the claimant made the contacts as documented on the DWC-052

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<sup>2</sup> Our count indicates the claimant states that she submitted 15 applications.

form but believed that the claimant was required to submit the required number of applications each week.<sup>3</sup>

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

Because we have reversed the hearing officer's determination and rendered a new decision that the claimant is entitled to SIBs for the 11th quarter on the basis that the claimant has complied with the requirements of Rule 130.102(d)(1)(D) we do not address the hearing officer's commentary regarding compliance with Rule 130.102(d)(1)(B), active participation in a VRP.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** 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  
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

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<sup>3</sup> We note that the CCH was held on April 20, 2010, and that APD 100229-s, *supra*, was filed on April 30, 2010, 10 days after the CCH.