

APPEAL NO. 101430  
FILED NOVEMBER 15, 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 September 15, 2010. The hearing officer resolved the sole issue before her by determining that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fourth quarter. The claimant appealed the hearing officer's determination. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

Eligibility criteria for SIBs 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) the claimant sustained a compensable injury on \_\_\_\_\_, which resulted in an impairment rating of 15% or greater; (2) the claimant did not elect to commute any portion of his impairment income benefits; and (3) the qualifying period for the fourth quarter of SIBs was April 11 through July 10, 2010. It is undisputed that 3 is the required minimum number of work search contacts established by Texas Workforce Commission (TWC) which are required for unemployment in the claimant's county of residence.

The claimant's theory of entitlement to SIBs for the fourth 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)(D) provides, in pertinent part, that an injured employee demonstrates an active effort to obtain employment by meeting at least the following work search efforts each week during the entire qualifying period by performing 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 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).

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.

In evidence is an Application for [SIBs] (DWC-52) for the fourth quarter of SIBs, in which the claimant documented the minimum of 3 work searches during each week of the qualifying period for a total of 41 work searches for the qualifying period in dispute. The claimant testified that his work search efforts included “cold calls” by telephone, word of mouth, in-person visits to businesses, and newspaper searches. The claimant further testified that after a telephone contact informed him that the business was accepting applications, he would go to the business and there be told that the business was not hiring and he could not fill out an application. The claimant also testified that he was not registered with TWC or with the Department of Assistive Rehabilitative Services during the qualifying period of the fourth quarter of SIBs. In the Background Information section of her decision, the hearing officer states that “[h]owever, [the] [c]laimant failed

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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.

to present job applications, except for two prospective employers, documenting his work search efforts.” In Finding of Fact No. 3(A), the hearing officer determined that the claimant did not demonstrate an active effort to obtain employment each week during the entire qualifying period by performing active work search efforts documented by job applications.

In the instant case, based on the hearing officer’s statements in the Background Information section, she believed that the claimant made and documented the 41 work search efforts; however, since the claimant only made two job applications, she found that the claimant did not meet the requirements of Rule 130.102(d)(1)(D). 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 fourth 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. See Appeals Panel Decision 100229-s, decided April 30, 2010. Accordingly, we reverse the hearing officer’s decision that the claimant is not entitled to SIBs for the fourth quarter and we render a new decision that the claimant is entitled to SIBs for the fourth quarter.

The true corporate name of the insurance carrier is **ACIG INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**WILLIAM S. MCINTYRE, IV  
1222 MERIT DRIVE, SUITE 1660  
DALLAS, TEXAS 75251.**

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Cynthia A. Brown  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge