

APPEAL NO. 120637
FILED JUNE 14, 2012

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 March 12, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the two issues before him, the hearing officer determined that: (1) the appellant/cross-respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter, December 8, 2011, through March 7, 2012, but he will only receive SIBs from January 19, 2012, through March 7, 2012, by virtue of his failure to timely file his second quarter Application for [SIBs] (DWC-52); and (2) the respondent/cross-appellant (carrier) is relieved of liability for SIBs because of the claimant's failure to timely file his DWC-52 for the second quarter from December 8, 2011, through January 18, 2012.

The claimant appealed the hearing officer's determination that he will only receive SIBs from January 19, 2012, through March 7, 2012, by virtue of his failure to timely file his second quarter DWC-52 and that the carrier is relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the second quarter. The carrier responded, urging affirmance. The carrier also cross-appealed the hearing officer's determination that the claimant is entitled to SIBs for the second quarter, December 8, 2011, through March 7, 2012. The appeal file does not contain a response to the carrier's cross-appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) the claimant sustained a compensable injury on [date of injury], which resulted in an impairment rating of 15% or greater; (2) the claimant has not commuted any portion of the impairment income benefits; (3) the qualifying period for the second quarter of SIBs was from August 26, 2011, through November 24, 2011; and (4) the Texas Workforce Commission Local Workforce Development Board has determined three weekly job searches for the county the claimant lives in, [County 1], are required for unemployment compensation for the qualifying period.

SECOND QUARTER SIBS

That portion of the hearing officer's determination that the claimant is entitled to SIBs for the second quarter, December 8, 2011, through March 7, 2012, is supported by sufficient evidence and is therefore affirmed.

TIMELINESS OF FILING CLAIMANT'S DWC-52

The claimant's theory for second quarter SIBs entitlement is work search contacts. In evidence is the claimant's DWC-52, which reflects the claimant's DWC-52 for second quarter SIBs was due on December 1, 2011. The evidence reflects that the claimant initially filed his DWC-52 for the second quarter on November 30, 2011. The claimant attached to his DWC-52 dated November 30, 2011, a Detailed Job Search/Employer Contact Log (Contact Log) for weeks 1 through 10 and 12 through 13 of the qualifying period documenting his work searches; however, the claimant's Contact Log did not include any information regarding week 11 of the qualifying period. The claimant submitted a Contact Log documenting the four job contacts he had made during week 11 of the qualifying period after the December 1, 2011, due date.¹

The hearing officer noted in the Background Information section of his decision the following:

As for the timeliness of [the] [c]laimant's [DWC-52], it cannot be considered timely. [The] [c]laimant did not provide evidence of a weekly job search for [week 11] to the [c]arrier until January 18, 2012. Without evidence of job searches for this week [the] [c]laimant would not have been eligible for SIBs for the [second] quarter. [The] [c]arrier would not have to have paid without this information so it cannot be said the [DWC-52] was complete until this information was provided. [The] [c]arrier is not liable for SIBs for the second quarter from December 8, 2011, through January 18, 2012.

The hearing officer found that the carrier received the claimant's completed second quarter DWC-52 on January 18, 2012, and determined the carrier is relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the second quarter.

Section 408.143 provides in pertinent part:

After the commissioner's initial determination of [SIBs], the employee must file a statement with the insurance carrier stating:

* * * *

- (3) that the employee has complied with the requirements adopted under Section 408.1415.

¹ We note that the evidence contains two different dates on which the claimant submitted a Contact Log for week 11 of the qualifying period. The hearing officer found the claimant submitted the Contact Log on January 18, 2012, which was one of the dates found in evidence.

- (b) The statement required under this section must be filed quarterly on a form and in the manner provided by the commissioner. The commissioner may modify the filing period as appropriate to an individual case.
- (c) Failure to file a statement under this section relieves the insurance carrier of liability for [SIBs] for the period during which a statement is not filed.

28 TEX. ADMIN. CODE § 130.101 (Rule 130.101) provides in part that an application for SIBs, required pursuant to Section 408.143(b), contain a statement, with supporting documentation, that the employee has complied with Section 408.1415. Rule 130.102, regarding eligibility for SIBs, requires an injured employee to complete and file an application for SIBs.

In the case on appeal, the claimant initially filed a DWC-52 for the second quarter qualifying period prior to the due date. It is uncontested that while the claimant submitted with his DWC-52 documentation of job search contacts he made during the second qualifying period to show compliance with Section 408.1415, he failed to include any documentation of job search contacts for week 11 of the qualifying period. The question becomes whether or not the claimant's failure to include a Contact Log or supporting documentation for one week of the qualifying period renders his DWC-52 "incomplete," and therefore a failure to timely file his DWC-52.

A similar situation was discussed in Appeals Panel Decision (APD) 021719, decided August 26, 2002. In that case, the claimant's position at the CCH on the good faith job search requirements under the SIBs rules in effect at the time of the qualifying period was that he searched for employment during every week of the qualifying period, and that he also was enrolled in a Texas Rehabilitation Commission-sponsored program. The claimant supplemented his original DWC-52 with additional job contacts at the benefit review conference. The carrier argued that a claimant's failure to file a complete DWC-52 by the due date constitutes a failure to file at all. We rejected that argument in that case, and stated that the completeness of a DWC-52 goes to the weight it will be given, not to whether that form has been timely filed.

Although APD 021719, *supra*, was decided prior to the current SIBs rules, we find the holding in that case remains applicable in the case on appeal. Further, we note that nowhere do the Act or Rules specifically explain what constitutes a complete DWC-52, nor do the Act or Rules require an injured employee to provide all evidence regarding SIBs eligibility at the time of filing, and we decline to read into the Act or Rules any such requirement. Therefore, we hold the claimant in this case timely filed his DWC-52 for the second quarter. Accordingly, we reverse that portion of the hearing

officer's SIBs determination that the claimant will only receive SIBs from January 19, 2012, through March 7, 2012, by virtue of his failure to timely file his second quarter DWC-52, by striking that language.

Further, we reverse the hearing officer's determination that the carrier is relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the second quarter from December 8, 2011, through January 18, 2012, and render a new decision that the carrier is not relieved of liability for SIBs because the claimant timely filed a DWC-52 for the second quarter.

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

**MR. RON O. WRIGHT, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge