

APPEAL NO. 121010  
FILED AUGUST 6, 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 April 25, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter, January 14 through April 13, 2012; and (2) the appellant (self-insured) did not waive the right to dispute entitlement to the claimant's entitlement to second quarter SIBs by failing to timely request a benefit review conference (BRC). The self-insured appeals the hearing officer's determination of the claimant's entitlement to SIBs under a theory of total inability to work. The appeal file does not contain a response from the claimant.

The hearing officer's determination that the self-insured did not waive the right to dispute entitlement to the claimant's entitlement to second quarter SIBs by failing to timely request a BRC was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that: (1) the claimant sustained a compensable injury on [date of injury]; (2) the claimant reached statutory maximum medical improvement from her compensable injury on December 3, 2010, with 15% impairment rating as determined by [Dr. P], a doctor appointed by the treating doctor; (3) the claimant has not commuted any portion of her impairment income benefits; (4) the dates for the second quarter of SIBs are from January 14 through April 13, 2012; (5) the dates for the qualifying period for second quarter SIBs are from October 2 through December 31, 2011; (6) the number of work searches required per week in [County 1] (the applicable county) is five; and (7) there have been no job applications sufficient to meet the requirement for the five applications per week.<sup>1</sup>

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 commissioner by rule shall adopt compliance standards for

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<sup>1</sup> We note that the hearing officer omitted from his decision the stipulation that there have been no job applications although the stipulation is reflected in the recording of the CCH.

SIBs recipients. 28 TEX. ADMIN. CODE §§ 130.100-130.109 (Rules 130.100-130.109) effective July 1, 2009, govern the eligibility of SIBs.

The claimant's theory of entitlement to SIBs for the second quarter is based on a total inability to work. There is no evidence regarding work search efforts, return to work efforts, or involvement with vocational rehabilitation programs or the Texas Workforce Commission. Rule 130.102(d)(1) provides, in pertinent part, that an injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period:

\* \* \* \*

- (E) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The claimant attached to her Application for [SIBs] (DWC-52) for the second quarter, a letter of her treating doctor, [Dr. L], dated March 5, 2012, as the narrative report from a doctor which specifically explains how the compensable injury causes a total inability to work. In that letter, Dr. L states in pertinent:

To Whom It May Concern:

The following includes answers to questions concerning [the claimant's] inability to work.

- 1) How the compensable injury caused total inability to work from [October 2 through December 21, 2011]?

[The claimant] was suffering from a failed cervical spine fusion that resulted in chronic pain that affected her cognitive abilities as well as perform [*sic*] in any type of sedentary or physical full or part time employment. [The claimant] was also under the influence of several different prescription medications prescribed by [Dr. V] [*sic*] [(Dr. V)] that would make her a liability to any employer and possibly a hazard to other employees and to herself unless she was in a controlled environment and at times needing assistance to get around.

The March 5, 2012, letter of Dr. L in evidence addresses the claimant's claimed inability to work only for the period, October 2 through December 21, 2011, but does not

constitute a narrative from a doctor which specifically explains how the compensable injury causes a total inability to work for each week of the qualifying period for the second quarter of SIBs, which includes the period December 22 through December 31, 2011. There is no medical narrative in evidence from Dr. L, or from any other doctor, that addresses the claimant's claimed total inability to work from December 22 through December 31, 2011 (the ending date of the qualifying period for second quarter SIBs). Therefore, the claimant did not establish entitlement to second quarter SIBs because she failed to meet the requirement of a narrative report from a doctor which specifically explains how the compensable injury causes a total inability to work each week during the entire qualifying period. See Rule 130.102(d)(1)(E).

Accordingly, we hold that the hearing officer's finding that during the qualifying period for the second quarter of SIBs that the claimant was unable to perform any type of work in any capacity is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that the claimant is entitled to SIBs for the second quarter of SIBs and render a new decision that the claimant is not entitled to SIBs for the second quarter.

The true corporate name of the insurance carrier is **WAL-MART ASSOCIATES, INC. (a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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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