

APPEAL NO. 121114
FILED AUGUST 16, 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 was held on May 10, 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 eligible for supplemental income benefits (SIBs) for the second quarter, August 30 through November 28, 2011; (2) the claimant is eligible for SIBs for the third quarter, November 29, 2011, through February 27, 2012; (3) the claimant is entitled to SIBs for the fourth quarter, February 28 through May 28, 2012; and (4) the appellant (carrier) is relieved of liability for SIBs because of the claimant's failure to timely file an Application for [SIBs] (DWC-52) for the entire second and third quarters. The carrier appeals the hearing officer's determinations that the claimant is eligible for second and third quarters SIBs and that the claimant is entitled to SIBs for the fourth quarter. The appeal file does not contain a response from the claimant. 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 entire second and third quarters was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], which resulted in an impairment rating (IR) of 15% or greater; the claimant had not commuted any portion of the impairment income benefits (IIBs); the filing date for the second quarter was August 23, 2011; and the filing date for the third quarter was November 22, 2011. The parties additionally stipulated to the qualifying dates for the second, third, and fourth quarter. However, the hearing officer mistakenly noted that the parties stipulated that the qualifying period for the second quarter of SIBs was from May 8 through August 16, 2011. A review of the record reflects that the parties actually stipulated that the qualifying period for the second quarter of SIBs was from May 18 through August 16, 2011.

The hearing officer's determination that the claimant is entitled to SIBs for the fourth quarter, February 28 through May 28, 2012, is supported by sufficient evidence and is affirmed. That portion of the hearing officer's determination that the claimant is eligible for SIBs for the third quarter, November 29, 2011, through February 27, 2012, is supported by sufficient evidence and is affirmed. As previously noted, 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 entire second and third quarters was not appealed and has become final pursuant to Section 410.169.

ELIGIBILITY FOR SECOND QUARTER SIBS

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 SIBs recipients. 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)) sets forth the eligibility criteria for SIBs. Rule 130.102(b) provides that an injured employee who has an IR of 15% or greater, who has not commuted any IIBs, who has not permanently lost entitlement to SIBs and who has completed and filed a DWC-52 in accordance with this subchapter is eligible to receive SIBs if, during the qualifying period, the injured employee: (1) has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has demonstrated an active effort to obtain employment in accordance with Section 408.1415 and this section. The hearing officer found that the claimant did not file a DWC-52 for the second quarter and that finding was not appealed. Filing a DWC-52 is a requirement that has to be met in order to become eligible for SIBs according to Rule 130.102(b). The hearing officer found that the claimant did not file a DWC-52 for the second quarter. Accordingly, the hearing officer erred in determining that the claimant is eligible for SIBs for the second quarter because the claimant did not meet the eligibility criteria set forth in Rule 130.102(b). That portion of the hearing officer's determination that the claimant is eligible for SIBs for the second quarter, August 30 through November 28, 2011, is reversed and a new decision rendered that the claimant is not eligible for SIBs for the second quarter, August 30 through November 28, 2011.

SUMMARY

We affirm the hearing officer's determination that the claimant is entitled to SIBs for the fourth quarter, February 28 through May 28, 2012. We affirm that portion of the hearing officer's determination that the claimant is eligible for SIBs for the third quarter, November 29, 2011, through February 27, 2012. As previously noted, 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 entire second and third quarters was not appealed and has become final pursuant to Section 410.169.

We reverse that portion of the hearing officer's determination that the claimant is eligible for SIBs for the second quarter, August 30 through November 28, 2011, and

render a new decision that the claimant is not eligible for SIBs for the second quarter, August 30 through November 28, 2011.

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

**NATIONAL REGISTERED AGENTS, INC.
16055 SPACE CENTER BOULEVARD, SUITE 235
HOUSTON, TEXAS 77062-6212.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge