

APPEAL NO. 122488
FILED JANUARY 14, 2013

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 October 29, 2012, in [City], Texas, with {hearing Officer} presiding as hearing officer. With regard to the three disputed issues before him, the hearing officer determined that: (1) the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the ninth quarter based on an active effort to obtain employment; (2) because the appellant (carrier) waived its right to contest the claimant's entitlement to SIBs for the ninth quarter by failing to timely request a benefit review conference (BRC), the claimant is entitled to SIBs based on carrier waiver; and (3) because "the claimant was not entitled to [SIBs] for 12 consecutive months, he has permanently lost entitlement to [SIBs]. Because the carrier waived its right to contest the [ninth] [q]uarter, however, the carrier must still pay the claimant SIBs for [the] [ninth] [q]uarter."

The carrier appealed the hearing officer's determinations that the carrier had waived its right to contest the ninth quarter of SIBs and that the carrier had to pay SIBs for the ninth quarter, contending that since the claimant has permanently lost entitlement to SIBs, the carrier did not waive its right to contest the claimant's entitlement to SIBs for the ninth quarter. The claimant responded, urging affirmance.

The hearing officer's determinations that: (1) the claimant is not entitled to SIBs for the ninth quarter based on an active effort to obtain employment; and (2) because the claimant was not entitled to SIBs for 12 consecutive months, he has permanently lost entitlement to SIBs, have not been appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that: the claimant had a final impairment rating of 15%; the claimant did not commute any portion of his impairment income benefits and the qualifying period for the ninth quarter runs from May 2 through July 31, 2012.

In a decision and order dated November 15, 2011, the claimant was determined not to be entitled to SIBs for the fifth quarter. Texas Department of Insurance, Division of Workers' Compensation records indicate that decision was not appealed.

In a decision and order dated September 5, 2012, the claimant was determined not to be entitled to SIBs for the sixth, seventh, or eighth quarters. Although that

decision was appealed to the Appeals Panel, the hearing officer's decision was allowed to become final on November 19, 2012.

Section 408.146(c) provides that an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury. 28 TEX. ADMIN. CODE § 130.106(a) (Rule 130.106(a)) similarly provides that an injured employee who is not entitled to SIBs for a period of four consecutive quarters permanently loses entitlement to such benefits and that determination was not appealed.

Once it has been determined that the claimant was not entitled to SIBs for a period of four consecutive quarters, the claimant permanently loses entitlement to SIBs. In this case, once the claimant permanently lost entitlement to SIBs he cannot subsequently be found to be entitled to SIBs for a succeeding quarter (the ninth quarter in this case) on either the merits or by waiver. In a decision and order dated November 15, 2011, the claimant was determined not to be entitled to SIBs for the fifth quarter. In another decision and order dated September 5, 2012, the claimant was determined not to be entitled to SIBs for the sixth, seventh and eighth quarters. The hearing officer determined that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c) and Rule 130.106(a), and that determination was not appealed.

Accordingly, we reverse the hearing officer's determination that because the carrier waived its right to contest the claimant's entitlement to SIBs for the ninth quarter by failing to timely request a BRC, the claimant is entitled to SIBs based on carrier waiver and we render a new decision that the claimant is not entitled to SIBs for the ninth quarter because he has permanently lost entitlement to SIBs pursuant to Section 408.146(c) and Rule 130.106(a).

We also reverse by striking so much of Conclusion of Law No. 5 and the Decision portion of the hearing officer's decision and order that "[b]ecause the carrier waived its right to contest the [ninth] [q]uarter, however, the carrier must still pay the claimant's SIBs for the [ninth] [q]uarter [based on a carrier waiver]." We render a new decision that because the claimant has permanently lost entitlement to SIBs the claimant is not entitled to SIBs for the ninth quarter and therefore, the carrier is relieved from further payment of SIBs.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620**

AUSTIN, TEXAS 78701.

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge