

APPEAL NO. 131005
FILED JUNE 17, 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 March 25, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 13th quarter, October 12, 2012, through January 10, 2013.

The appellant (carrier) appealed the hearing officer's SIBs determination. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that: (1) the claimant sustained a compensable injury on [date of injury], which resulted in an impairment rating (IR) of 15% or greater; (2) the claimant had not commuted any portion of the impairment income benefits; (3) the qualifying period for the 13th quarter of SIBs was June 30 through September 28, 2012; (4) during the qualifying period for the 13th quarter of SIBs, the claimant was unemployed; and (5) during the qualifying period of the 13th quarter of SIBs, the minimum number of job contacts required for [County] was five per week.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142. Section 408.142 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 §§ 130.100-130.109 (Rules 130.100-130.109), effective July 1, 2009, govern the eligibility of SIBs.

Rule 130.102(d)(1) provides 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:

- (A) has returned to work in a position which is commensurate with the injured employee's ability to work;
- (B) has actively participated in a vocational rehabilitation program as defined in [Rule] 130.101 of this title (relating to [d]efinitions);
- (C) has actively participated in work search efforts conducted through the Texas Workforce Commission;

(D) has performed active work search efforts documented by job applications;
or

(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.

(2) An injured employee who has not met at least one of the work search requirements in any week during the qualifying period is not entitled to SIBs unless the injured employee can demonstrate that he or she had reasonable grounds for failing to comply with the work search requirements under this section.

The hearing officer's determination and the claimant's theory of entitlement for SIBs for the 13th quarter, were based on an active work search effort documented by job applications (Rule 130.102(d)(1)(D)) each week during the qualifying period.

A review of the Detailed Job Search/Employer Contact Log of the Application for [SIBs] (DWC-52) for the 13th quarter qualifying period (June 30 through September 28, 2012) lists job contacts for each week during the qualifying period; however, the claimant only documents four job contacts in the third week (July 14 through July 20, 2012). Clearly the claimant did not meet the requirement of making five job searches during each week of the qualifying period.

As previously noted, Rule 130.102(d)(1) provides 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." The preamble to Rule 130.102 stated "[s]ubsection (d)(1) is also amended to add 'each week' before 'during' and 'entire' before 'qualifying period' to clarify that the injured employee's work search efforts were to continue each week during the entire qualifying period." (34 Tex. Reg. 2140, 2009). See *also* Appeals Panel Decision 101722, decided January 12, 2011. The claimant presented no evidence of any other active work search efforts for week three of the 13th quarter qualifying period of SIBs. Therefore, the hearing officer's SIBs determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

Accordingly, we reverse the hearing officer's determination that the claimant is entitled to SIBs for the 13th quarter and we render a new decision that the claimant is not entitled to SIBs for the 13th quarter.

The true corporate name of the insurance carrier is **VALLEY FORGE INSURANCE COMPANY** 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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge