

APPEAL NO. 140449  
FILED APRIL 25, 2014

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 January 23, 2014, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter. The appellant (self-insured) appealed, disputing the hearing officer's determination of the claimant's entitlement to fifth quarter SIBs. The self-insured argued that the claimant's reduced earnings is not a direct result of the impairment from the compensable injury and that the claimant's job search activities through monster.com should not satisfy the requirement of active job search efforts. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury resulting in a Texas Department of Insurance, Division of Workers' Compensation (Division) finding of an impairment rating of 15% or greater; (2) the claimant commuted no portion of the impairment income benefits; (3) the qualifying period for the fifth quarter of SIBs was from April 18 through July 17, 2013; (4) during the qualifying period, the claimant was unemployed; (5) the claimant is a resident of [County], Texas; and (6) residents of [County] are required to make at least 6 job search contacts per week to qualify for SIBs.

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 Division 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 [VRP] 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.

The hearing officer noted in the discussion portion of her decision that the claimant provided documentation of her work search efforts. The hearing officer further noted that the parties stipulated that the claimant was required to make at least 6 job search contacts per week to qualify for SIBs and that the claimant had done so by completing online job applications through monster.com.

A review of the Detailed Job Search/Employer Contact Log of the Application for [SIBs] (DWC-52) for the fifth quarter qualifying period (April 18 through July 17, 2013) lists at least 6 job contacts for 12 weeks of the qualifying period but fails to list any job searches for the 13th week of the qualifying period. In her DWC-52 under Section 5: Wages During Qualifying Period, the claimant misidentifies the ending date of each week of the qualifying period. The claimant identifies the first week as ending on April 23, 2013, rather than the actual ending date of April 24, 2013, and was one day off of the ending date in each of the succeeding weeks of the qualifying period. The 12th week of the qualifying period actually began on July 4, 2013, and ended on July 10, 2013, with the 13th week beginning on July 11, 2013, and ending on July 17, 2013. The claimant states in her DWC-52 that she made job searches during week 12 and 13 of the qualifying period. However, a review of the record reflects that the claimant made 6 job searches on July 8, 2013, and 7 job searches on July 10, 2013, for a total of 13 job searches for the 12th week. The record does not include any documentation of a job search conducted during the 13th week of the qualifying period, July 11 through July 17, 2013.

Section 408.1415(a)(1) provides that to be eligible to receive SIBs, a recipient must provide evidence satisfactory to the Division of active participation in a VRP conducted by the Department of Assistive and Rehabilitative Services (DARS) or a

private vocational rehabilitation provider. Rule 130.101(8) defines VRP as any program, provided by DARS, a comparable federally-funded rehabilitation program in another state under the Rehabilitation Act of 1973, as amended, or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services, for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a VRP. A VRP, also known as an Individual Plan for Employment at DARS, includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

In evidence is an Individualized Plan for Employment (IPE) from DARS which identifies services provided from September 13, 2012, through January 31, 2013. There is also a letter from a dentist to DARS confirming that as of May 8, 2012, the claimant had successfully completed a 200 hour internship. The claimant testified that the letter contains a typographical error and that the internship was completed as of May 8, 2013. However, we note that even if the hearing officer was persuaded by the claimant's testimony regarding the correct date, there was no evidence that the claimant performed any activity under her IPE in the 13th week of the qualifying period of the fifth quarter 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." 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 13 of the fifth 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 fifth quarter and we render a new decision that the claimant is not entitled to SIBs for the fifth quarter.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN D. BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN D. BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge