

APPEAL NO. 142069  
FILED NOVEMBER 19, 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 (CCH) was held on August 27, 2014, in Amarillo, 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 first quarter. The appellant (carrier) appealed the hearing officer's determination, contending that the hearing officer's determination is against the great weight and preponderance of the evidence. The carrier argues that the claimant failed to meet the required job search requirements for multiple weeks of the qualifying period and that the claimant failed to demonstrate reasonable grounds for failing to meet the requirements under 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant responded, urging affirmance of the hearing officer's SIBs determination.

DECISION

Reversed and rendered.

The parties stipulated in part that: (1) the claimant's impairment rating is 15% or more; (2) the claimant did not commute any portion of the impairment income benefits; (3) the first quarter of SIBs began on May 6, 2014, and continued through August 4, 2014; and (4) the qualifying period for the first quarter of SIBs began on January 22, 2014, and continued through April 22, 2014. It was undisputed that the claimant was required to make two weekly job searches for the qualifying period in question. It was also undisputed that the claimant has lived in Oregon for the past three years.

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 (Division) commissioner by rule shall adopt compliance standards for SIBs recipients. 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.

Rule 130.102(d)(2) provides that:

(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 claimant's theory of entitlement to SIBs for the first quarter was based on an active work search effort documented by job applications each week during the qualifying period. It was undisputed, and the record reflects, that the claimant failed to make two job searches in weeks two and thirteen of the first quarter qualifying period.

In evidence is the claimant's Application for [SIBs] (DWC-52) for the first quarter. It is undisputed that the claimant completed all portions of the DWC-52, and that he noted on the DWC-52 that the qualifying period for the first quarter began on January 22, 2014, which is a Wednesday, and ended on April 22, 2014, which is a Tuesday. Also in evidence are copies of the claimant's job applications with dates that fall within the first quarter qualifying period, as well as three job applications that are undated. We note the record reflects that the claimant failed to make two job searches in at least weeks two, five, six, eight, and thirteen.

The claimant testified that he did not make two job searches in one week because he "messed up" and was "nervous." The claimant also testified that he was told by a Division employee that he should follow the directions given to him by the Oregon unemployment office regarding his job searches. The claimant further testified that he was told by an employee with the Oregon office that a week is calculated as being Sunday through Saturday, and going by that direction, he understood the

qualifying period to start on Sunday, January 19, 2014, rather than Wednesday, January 22, 2014.

The hearing officer found that for weeks two and thirteen, the claimant demonstrated that he had reasonable grounds for failing to comply with the work search requirements. The hearing officer specifically stated that:

I find that [the] [c]laimant failed to make two job contacts each week of the qualifying period as required to demonstrate an active effort to obtain employment. However, I find that he has shown reasonable grounds for failing to comply with the letter of the work search requirements. He made more than the minimum number of job contacts for the quarter. His documented job contacts were off one day for the second week and one day for the thirteenth week. For these reasons, I find that [the] [c]laimant is entitled to [SIBs] for the first quarter.

The carrier argues that the hearing officer erred in finding that the claimant had reasonable grounds for failing to meet the Rule 130.102(d)(1)(D) work search requirements. The carrier also argued that, even if one were to calculate the qualifying period as beginning on Sunday, January 19, 2014, the claimant still did not complete two job searches in each week of the qualifying period.

As previously noted, Rule 130.102 provides that an injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the specified 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).

Rule 130.102(d)(2) provides that 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 preamble to Rule 130.102 states that Rule 130.102(d)(2) was added to confirm that hearing officers would continue to retain discretion in determining if an injured employee had demonstrated reasonable grounds for failure to meet at least one of the work search requirements in this section during any week during the qualifying period. (34 Tex. Reg. 2140, 2009). See Appeals Panel Decision (APD) 101913, decided February 18, 2011.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See *Cain v. Bain*, 709 S.W.2d 175 (Tex. 1986).

In the instant case, the claimant contended that he had reasonable grounds for his failure to make two job searches each week of the first quarter qualifying period because he misunderstood the calculation of the qualifying period weeks. Although the preamble to Rule 130.102 provides that hearing officers retain discretion in determining if an injured employee has demonstrated reasonable grounds for failure to meet one of the work search requirements in any week during the qualifying period, the Appeals Panel has previously held that ignorance of the law and applicable rules does not excuse noncompliance of the SIBs requirements. See APD 033092, decided January 6, 2004.

Furthermore, even if the qualifying period weeks were calculated to begin on Sunday, January 19, 2014, and end on Saturday, April 13, 2014, the record reflects that the claimant still did not make two job searches in weeks two, six, and seven. Under the facts of this case, we cannot agree that the claimant’s misunderstanding of the qualifying period weeks and failure to make two work searches in each week of the first quarter qualifying period constitute reasonable grounds for failing to comply with the work search requirements of Rule 130.102. Therefore, the hearing officer’s determination that the claimant is entitled to SIBs for the first quarter is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We therefore reverse the hearing officer’s determination, and we render a new decision that the claimant is not entitled to SIBs for the first quarter.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** 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 78701-3218.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge