

APPEAL NO. 111169
FILED OCTOBER 10, 2011

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 July 12, 2011. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter. The appellant (carrier) appeals the hearing officer's determination of the claimant's entitlement to 11th quarter SIBs. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that: (1) the claimant sustained a compensable injury on (date of injury); (2) the claimant reached maximum medical improvement from his compensable injury on September 19, 2006; (3) the claimant's impairment rating is 36%; (4) the claimant has not commuted any portion of his impairment income benefits; and (5) the qualifying period for the 11th quarter of SIBs is December 30, 2010, through March 30, 2011.¹

Eligibility criteria for SIBs entitlement are set forth in Section 408.142. 28 TEX. ADMIN CODE § 130.101(4) (Rule 130.101(4)) provides in part, that a qualifying period that begins on or after July 1, 2009, is subject to Rules 130.100-130.109 effective July 1, 2009.

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);

¹ We note that the hearing officer mistakenly identified the dates of the 11th quarter and the dates of the qualifying period in the stipulations included in his decision and order. The parties actually stipulated that the dates of the 11th quarter are April 13, 2011, through July 12, 2011, and the dates of the qualifying period for the 11th quarter are December 30, 2010, through March 30, 2011.

- (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 claimant's theory of entitlement to SIBs for the 11th quarter was active participation in a VRP conducted by the Department of Assistive and Rehabilitative Services (DARS) (Rule 130.102)(d)(1)(B)). The hearing officer noted that an Individualized Plan for Employment (IPE) was initiated for the claimant on January 18, 2007, and that amendments had been made to the plan. In evidence is an IPE dated December 8, 2008, and provides for services to December 8, 2009. Additionally, in evidence is a case note dated November 12, 2009, from DARS which states the dates of services will be extended until November 12, 2010; and a case note dated January 11, 2011, which states the dates of service of the IPE will be extended until January 11, 2012.

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).

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 claimant presented no evidence of any other active work search efforts or compliance with a DARS IPE specifically for week one of the 11th quarter qualifying period. Neither the IPE dated December 8, 2008, nor the two case notes extending the IPE, reference the first week of the qualifying period for the 11th quarter (December 30, 2010, through January 5, 2011). The first case note extended the IPE through November 12, 2010. However, the second case note did not extend the IPE until January 11, 2011. No evidence was presented to indicate that an IPE was in effect during the first week of the qualifying period for the 11th quarter but rather there was a gap in time, November 13, 2010, through January 10, 2011, when no IPE was in effect.

We reverse the hearing officer's determination that the claimant is entitled to SIBs for the 11th quarter as being so against the great weight and preponderance of the

evidence as to be clearly wrong and manifestly unjust. We render a new decision that the claimant is not entitled to SIBs for the 11th quarter.

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

**DAVE CUNNINGHAM
2435 NORTH CENTRAL EXPRESSWAY, SUITE 400
RICHARDSON, TEXAS 75080.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge