

APPEAL NO. 182565
FILED JANUARY 9, 2019

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 31, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. The claimant appealed, disputing the ALJ's determination of non-entitlement to SIBs for the sixth quarter. The respondent (self-insured) responded, urging affirmance of the disputed sixth quarter SIBs determination.

DECISION

Reversed and remanded.

The parties stipulated, in part, that: on (date of injury), the claimant sustained a compensable injury, which resulted in an impairment rating of 15% or greater; the qualifying period for the sixth quarter of SIBs was from April 7, 2018, through July 6, 2018, and three is the required minimum number of work search contacts established by the Texas Workforce Commission (TWC), which are required for unemployment in the claimant's county of residence (County) during each week of the qualifying period of the sixth quarter of 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 Texas Department of Insurance, Division of Workers' Compensation (Division) commissioner by rule shall adopt compliance standards for SIBs recipients. 28 TEX. ADMIN. CODE §§ 130.100-130.109 (Rules 130.100-130.109) 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 [TWC];

- (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 ALJ noted in the discussion portion of her decision that the claimant completed at least three work searches during each week of the sixth quarter qualifying period, except in week 7 which was from May 19, 2018, through May 25, 2018. The claimant testified that she mixed up the dates due to the loss of her mother, two uncles, and her dog. However, the ALJ noted that the deaths occurred in late March and early April and the claimant failed to explain why she was able to complete her job searches for weeks 1 through 6 but was more affected in week 7.

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 the TWC,¹ 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 for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan, also known as an Individualized Plan for Employment (IPE) at TWC, 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.²

The ALJ notes in her discussion that the claimant did not offer an IPE into evidence to support her claim. However, a review of the evidence reflects that the claimant offered an IPE into evidence and it was admitted. The ALJ based her determination of non-entitlement to SIBs on a misstatement of the evidence. Accordingly, we reverse the ALJ's determination that the claimant is not entitled to SIBs for the sixth quarter and remand the issue of entitlement to sixth quarter SIBs to the ALJ for further action consistent with this decision.

¹ Effective September 1, 2016, DARS was dissolved and its vocational rehabilitation services were transferred to TWC.

² We note that Rule 130.101 was amended to be effective April 15, 2018.

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 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). See *also* Appeals Panel Decision (APD) 101722, decided January 12, 2011.

SUMMARY

We reverse the ALJ’s determination that the claimant is not entitled to SIBs for the sixth quarter and we remand the issue of entitlement to sixth quarter SIBs to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct her misstatement of the evidence regarding the IPE. The ALJ shall consider all of the evidence and make a determination of whether the claimant is entitled to SIBs for the sixth quarter.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **HURST-EULESS-BEDFORD INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**STEVEN CHAPMAN, SUPERINTENDENT
1849 CENTRAL DRIVE
BEDFORD, TEXAS 76022.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge