

APPEAL NO. 190611  
FILED MAY 14, 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 (CCH) was held on February 12, 2019, with the record closing on February 27, 2019, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the respondent (claimant) is entitled to the third quarter of supplemental income benefits (SIBs). The appellant (carrier) appeals the ALJ's determination of the claimant's entitlement to third quarter SIBs. The claimant responds, urging affirmance of the ALJ's determination of entitlement to SIBs for the third quarter.

DECISION

Reversed and remanded.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury, which resulted in an impairment rating of 15% or greater; (2) the qualifying period for the third quarter was from July 28 through October 26, 2018; and (3) during the qualifying period for the third quarter, the claimant was the resident of (city), (state), (County).

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 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 claimant's theory of entitlement to SIBs for the third quarter was that he performed the requisite number of work search efforts required for his county of residence in each week of the qualifying period. No evidence was presented that the claimant had returned to work in any capacity during the qualifying period. The ALJ made a finding of fact that during the qualifying period for the third quarter, the claimant demonstrated an active effort to obtain employment each week during the qualifying period by returning to work in a position commensurate with his ability to work. That finding is so against the great weight and preponderance of the evidence that it is clearly wrong and manifestly unjust. The ALJ failed to make a finding regarding the work search efforts documented by job applications, which was the theory of entitlement the claimant argued at the CCH. Accordingly, we reverse the ALJ's determination that the claimant is entitled to SIBs for the third quarter and remand the issue of entitlement to third quarter SIBs to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

The ALJ shall consider all of the evidence and make a finding regarding whether the claimant demonstrated an active effort to obtain employment by performing active work search efforts as documented by job applications. The ALJ shall then make a determination of whether the claimant is entitled to SIBs for the third quarter that is supported by the evidence.

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 Appeals Panel Decision 060721, decided June 12, 2006.

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

**ROBIN MILLER  
5221 NORTH O'CONNOR BOULEVARD, SUITE 400  
IRVING, TEXAS 75039-3711.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge