

APPEAL NO. 191783  
FILED NOVEMBER 7, 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 September 10, 2019, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, April 4 through July 3, 2018; (2) the claimant is not entitled to SIBs for the second quarter, July 4 through October 2, 2018; (3) the claimant is not entitled to SIBs for the third quarter, October 3, 2018, through January 1, 2019; (4) the claimant is not entitled to SIBs for the fourth quarter, January 2 through April 2, 2019; (5) the claimant is not entitled to SIBs for the fifth quarter, April 3 through July 2, 2019; and (6) the respondent (carrier) is relieved of liability for SIBs for the first through fourth quarters because of the claimant's failure to timely file an Application for [SIBs] (DWC-52) for those quarters.

The claimant appealed, disputing the ALJ's SIBs determinations. The claimant also disputed the ALJ's determination that the carrier is relieved of liability for SIBs for the first through fourth quarters because of the claimant's failure to timely file SIBs applications for those quarters. The carrier responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part as reformed and reversed and rendered in part.

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury), which the Texas Department of Insurance, Division of Workers' Compensation (Division) determined resulted in an impairment rating of 15% or greater; (2) the qualifying period for the first quarter of SIBs was from December 21, 2017, through March 21, 2018; (3) the qualifying period for the second quarter of SIBs was from March 22 through June 20, 2018; (4) the qualifying period for the third quarter of SIBs was from June 21 through September 19, 2018; (5) the qualifying period for the fourth quarter of SIBs was from September 20 through December 19, 2018; (6) the qualifying period for the fifth quarter of SIBs was from December 20, 2018, through March 20, 2019; and (7) the claimant's county of residence requires three job searches each week of the qualifying period. A review of the record reflects that the parties stipulated that on (date of injury), the claimant's employer provided workers' compensation insurance with Texas Mutual Insurance Company. However, the ALJ incorrectly found in Finding of Fact No. 1.C. that on (date of injury), the claimant's employer provided workers' compensation insurance as a self-insured. We reform

Finding of Fact No. 1.C. to conform to the actual stipulation of the parties to read as follows: On (date of injury), the claimant's employer provided workers' compensation insurance with Texas Mutual Insurance Company. The records reflect that the claimant sustained an injury to his right upper extremity when it was caught in a machine used to cut sheet metal.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

### **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, in part, that an injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of specified work search requirements each week during the entire qualifying period, including the following:

(D) has performed active work search efforts documented by job applications.

The claimant's theory of entitlement for SIBs for the first through fifth quarters was based on an active work search effort documented by job applications each week during the qualifying period. We note that in her discussion of the evidence, the ALJ incorrectly stated that the claimant did not provide the business address, phone number or website for any of the contacts listed. A review of the evidence reflects that the phone numbers for some of the contacts listed were provided. However, the evidence reflects that the claimant only performed eight job searches for each of the qualifying periods for the first through fifth quarters of SIBs. The ALJ found that the claimant did not provide documentation of at least three work search contacts each week of the qualifying periods for the first through fifth quarter qualifying periods. That finding is supported by sufficient evidence. Accordingly, the ALJ's determinations that the

claimant is not entitled to SIBs for the first, second, third, fourth, or fifth quarter of SIBs is supported by sufficient evidence and is affirmed.

### **TIMELY FILING OF SIBS APPLICATION**

Section 408.143(c) provides that failure to file a statement under that section relieves the insurance carrier of liability for SIBs for the period during which a statement is not filed. Rule 130.104(c) provides, in part, that except as otherwise provided in that section, a DWC-52 shall be filed no later than 7 days before, and no earlier than 20 days before, the beginning of the quarter for which the injured employee is applying for SIBs. Rule 130.105(a) provides, in part, that an injured employee who does not timely file a DWC-52 with the insurance carrier shall not receive SIBs for the period of time between the beginning date of the quarter and the date on which the form was received by the insurance carrier. Rule 130.105(a) does contain some exceptions to the timely filing of the SIBs application, but none of those exceptions were shown to apply in this case.

The disputed issue regarding timely filing before the ALJ was as follows: Is the carrier relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the first through fifth quarters, and if so, for what period? The ALJ's determination that the carrier is relieved of liability for SIBs for the second through fourth quarters because of the claimant's failure to timely file a DWC-52 for those quarters is supported by sufficient evidence and is affirmed.

Section 408.143(a) provides that after the Division's initial determination of SIBs, the employee must file a statement. We note that by its plain language, Section 408.143(c), which provides that the claimant's failure to timely file a DWC-52 relieves the carrier of liability for the period during which the statement is not filed, does not apply to the first quarter. See Appeals Panel Decision 030285, decided March 11, 2003. Therefore, the ALJ improperly determined that the carrier would be relieved of liability for the first quarter because of the claimant's late filing. Although it does not change the outcome of this case, we reverse that portion of the decision that the carrier is relieved of liability for SIBs for the first quarter of SIBs and render a new decision that the carrier is not relieved of liability for SIBs for the first quarter.

As previously noted, the issue before the ALJ also included whether the carrier is relieved of liability for SIBs for the fifth quarter. The ALJ failed to make a determination of whether the carrier is relieved of liability for SIBs for the fifth quarter because of the claimant's failure to timely file an application for fifth quarter SIBs which was an issue before her to decide. Accordingly, we reverse the ALJ's decision as being incomplete.

It was undisputed that the fifth quarter was from April 3 through July 2, 2019. The ALJ found that the claimant filed a DWC-52 for the first through fifth quarters on April 19, 2019. That finding is supported by sufficient evidence. Accordingly, we render a new decision that the carrier is relieved of liability for SIBs for the fifth quarter because of the claimant's failure to timely file a DWC-52 from April 3 through April 18, 2019, and that the carrier is not relieved of liability for SIBs for the fifth quarter because of the claimant's failure to timely file a DWC-52 from April 19 through July 2, 2019. However, as previously noted, the ALJ's determination that the claimant is not entitled to SIBs for the fifth quarter, April 3 through July 2, 2019, is supported by sufficient evidence and is affirmed. Further, we note that Section 408.146(c) provides that notwithstanding any other provision of this section, an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury.

### **SUMMARY**

We reform Finding of Fact No. 1.C. to read as follows: On (date of injury), the claimant's employer provided workers' compensation insurance with Texas Mutual Insurance Company.

We affirm the ALJ's determination that the claimant is not entitled to SIBs for the first quarter, April 4 through July 3, 2018.

We affirm the ALJ's determination that the claimant is not entitled to SIBs for the second quarter, July 4 through October 2, 2018.

We affirm the ALJ's determination that the claimant is not entitled to SIBs for the third quarter, October 3, 2018, through January 1, 2019.

We affirm the ALJ's determination that the claimant is not entitled to SIBs for the fourth quarter, January 2 through April 2, 2019.

We affirm the ALJ's determination that the claimant is not entitled to SIBs for the fifth quarter, April 3 through July 2, 2019.

We affirm the ALJ's determination that the carrier is relieved of liability for SIBs for the second through fourth quarters because of the claimant's failure to timely file a DWC-52 for those quarters.

We reverse that portion of the ALJ's determination that the carrier is relieved of liability for SIBs for the first quarter of SIBs and render a new decision that the carrier is not relieved of liability for SIBs for the first quarter.

We reverse the ALJ's determination as being incomplete and render a new decision that the carrier is relieved of liability for SIBs for the fifth quarter because of the claimant's failure to timely file a DWC-52 from April 3 through April 18, 2019, and that the carrier is not relieved of liability for SIBs for the fifth quarter because of the claimant's failure to timely file a DWC-52 from April 19 through July 2, 2019.

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

**MR. RICHARD GERGASKO, PRESIDENT  
2200 ALDRICH STREET  
AUSTIN, TEXAS 78723.**

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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