

APPEAL NO. 200033  
FILED FEBRUARY 28, 2020

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 December 5, 2019, with the record closing on December 13, 2019, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the sole disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter, September 4 through December 3, 2019. The claimant appealed, contending he is entitled to SIBs for the sixth quarter. The respondent (carrier) responded, urging affirmance of the ALJ's determination.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the qualifying period for the sixth quarter of SIBs was from May 23 through August 21, 2019; the claimant's county of residence, (county), requires three job searches each week of the qualifying period; and the claimant was unemployed during the qualifying period for the sixth quarter of SIBs. The claimant testified he was injured when moving sheetrock.

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, in pertinent 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 sixth quarter is based on an active work search effort documented by job applications each week during the qualifying period. In evidence is the claimant's sixth quarter Application for [SIBs] (DWC-52), which lists at least three job searches per week during the sixth quarter

qualifying period. The claimant included with his completed DWC-52 supporting documentation in the form of printouts of confirmations of his work search efforts through indeed.com. See Appeals Panel Decision (APD) 100229-s, decided April 30, 2010, in which the Appeals Panel noted the preamble to Rule 130.102(d)(1)(D) clarifies that “work search efforts” encompass both job applications and work search contacts as described by Texas Workforce Commission rules.

The claimant testified at the CCH that he used indeed.com as an internet job search engine to make weekly job searches. The claimant’s DWC-52 reflects the claimant submitted a job application with (employer) on June 26, 2019, as one of the three job searches he made in week five of the qualifying period.

In the discussion portion of his decision the ALJ noted a report dated October 25, 2019, from (vocational rehabilitation management entity), which found deficiencies in the claimant’s reported job searches for week five, among others, of the sixth quarter qualifying period. The ALJ noted that (vocational rehabilitation management entity) contacted (employer), who confirmed they did not receive an email regarding the claimant or a resume from the claimant. The ALJ also noted that (employer) conducted a second search and confirmed by email that no application from the claimant was found. The ALJ stated the following:

[The] [c]laimant did not submit an acknowledgement or receipt from “indeed.com” for this employer like he did for many other employers. [The] [c]laimant appears to have consistently and frequently attached receipts or acknowledgements from “indeed.com” for applications he noted on the weekly logs. Therefore, the lack of a receipt or acknowledgement for . . . [employer] . . . is some evidence that [the] [c]laimant did not submit an application [for this position].

However, the ALJ erred in stating there was no receipt of acknowledgement for (employer). In evidence is a document titled “Indeed Application: Office Assistant/Receptionist.” This document reflects indeed.com sent an email to the claimant on June 26, 2019, confirming the claimant had submitted a job application for an office assistant/receptionist position with (employer).

The ALJ based his unfavorable assessment of the credibility of the claimant’s job searches, in part, on his error that there was no receipt of acknowledgement for (employer), which is a misstatement of the evidence. Because the ALJ’s determination that the claimant is not entitled to SIBs for the sixth quarter is based on a misstatement of the evidence, 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 his misstatement of the evidence regarding the acknowledgement from indeed.com of the claimant's job application for (employer) on June 26, 2019. 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 **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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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge