

APPEAL NO. 200830  
FILED JULY 15, 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 May 6, 2020, 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 fifth, sixth, or seventh quarter; (2) the respondent (carrier) is relieved of liability for SIBs because of the claimant's failure to timely file an Application for [SIBs] (DWC-52) for the fifth quarter from September 10 through December 9, 2019; and (3) the claimant has permanently lost entitlement to SIBs benefits pursuant to Section 408.146(c). The claimant appealed, disputing the ALJ's determinations of SIBs entitlement for the fifth, sixth, and seventh quarters; permanent loss of entitlement to SIBs as well as the ALJ's determination 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. The carrier responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and rendered in part.

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 fifth quarter of SIBs was from May 29 through August 27, 2019; the qualifying period for the sixth quarter of SIBs was from August 28 through November 26, 2019; and the qualifying period for the seventh quarter of SIBs was from November 27, 2019, through February 25, 2020. It was undisputed that the claimant sustained an injury to his right hand on (date of injury). We note that the ALJ's signature in her decision is mistakenly dated May 6, 2019, rather than May 6, 2020.

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 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), effective July 1, 2009, govern the eligibility of SIBs. The claimant's theory of entitlement for SIBs for the fifth, sixth, and seventh quarters was that he had a total inability to work. The ALJ found that during the qualifying periods for the fifth, sixth, and seventh SIBs quarters: the claimant was unemployed; the claimant did not actively participate in a vocational rehabilitation program; the claimant did not demonstrate an active effort to obtain employment each week during the entire qualifying periods; the claimant had some ability to work; and the claimant did not demonstrate that he had reasonable grounds for failing to comply with the work search requirements under Rule 130.102(d).

The ALJ's determination that the claimant is not entitled to SIBs for the fifth, sixth, or seventh quarter of SIBs is supported by sufficient evidence and is affirmed.

### **PERMANENT LOSS OF ENTITLEMENT TO SIBS**

Section 408.146(c) provides that 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. Rule 130.106(a) similarly provides that an injured employee who is not entitled to SIBs for a period of four consecutive quarters permanently loses entitlement to such benefits.

Once it has been determined that the claimant was not entitled to SIBs for a period of four consecutive quarters, the claimant permanently loses entitlement to SIBs. In evidence was a prior decision and order from a CCH held on January 16, 2020, that determined that the claimant was not entitled to SIBs for the first, second, third, or fourth quarter. Additionally, in evidence is a letter dated March 4, 2020, stating that the Appeals Panel did not issue a written decision regarding the January 16, 2020, CCH and the ALJ's decision became final. Section 410.205(b) provides that the decision of the appeals panel regarding benefits is binding during the pendency of an appeal under Subchapter F or G (relating to judicial review). The ALJ's determination that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c) 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. See *a/so* Appeals Panel Decision 191783, decided November 7, 2019.

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 fifth quarter, and if so, for what period? It is undisputed that the fifth quarter for SIBs was from September 10 through December 9, 2019. The ALJ found that the carrier received the claimant's DWC-52 for the fifth quarter on November 26, 2019. That finding is supported by sufficient evidence. However, the ALJ mistakenly determined that the carrier is relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the fifth quarter from September 10 through December 9, 2019, the entire fifth quarter. We affirm that portion of the ALJ's determination that the carrier is relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the fifth quarter from September 10 through November 25, 2019. 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 fifth quarter of SIBs from November 26 through December 9, 2019, and render a new decision that the carrier is not relieved of liability for SIBs for the period of November 26 through December 9, 2019, based on the claimant's filing of a DWC-52 for the fifth quarter on November 26, 2019. However, once the claimant permanently lost entitlement to SIBs he cannot subsequently be found to be entitled to SIBs for a succeeding quarter on either the merits or by waiver.

### **SUMMARY**

We affirm the ALJ's determination that the claimant is not entitled to SIBs for the fifth, sixth, or seventh quarter of SIBs.

We affirm the ALJ's determination that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c).

We affirm that portion of the ALJ's determination that the carrier is relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the fifth quarter from September 10 through November 25, 2019.

We reverse that portion of the decision that the carrier is relieved of liability for SIBs for the fifth quarter of SIBs from November 26 through December 9, 2019, and render a new decision that the carrier is not relieved of liability for SIBs for the period of November 26 through December 9, 2019, based on the claimant's filing of a DWC-52 for the fifth quarter on November 26, 2019.

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

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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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