

APPEAL NO. 201172
FILED OCTOBER 13, 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 was held on July 1, 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 respondent/cross-appellant (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter from January 31 through April 30, 2020; and (2) the claimant is not entitled to SIBs for the second quarter from May 1 through July 30, 2020.

The appellant/cross-respondent (self-insured) appealed the ALJ's determination that the claimant is entitled to SIBs for the first quarter, contending that the claimant applied for jobs that he was not qualified for and was not physically able to perform. The appeal file does not contain a response from the claimant to the self-insured's appeal.

The claimant cross-appealed, disputing the ALJ's determination that the claimant is not entitled to SIBs for the second quarter. The claimant argued that due to a statewide health disaster, the claimant was not required to perform a job search as of March 13, 2020. The self-insured responded, urging affirmance of the determination disputed by the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury in the form of a lumbar sprain, left fibular fracture, left tibia fracture, compartment syndrome, lumbar contusion, and left leg pain which resulted in an impairment rating of 15% or greater; (2) the first quarter of SIBs was from January 31 through April 30, 2020, with a corresponding qualifying period from October 19, 2019, through January 17, 2020; (3) the second quarter of SIBs was from May 1 through July 30, 2020, with a corresponding qualifying period from January 18 through April 17, 2020; and (4) the required number of job searches for (County), the claimant's county of residence, is five per week.

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).

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.

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.

FIRST QUARTER SIBS

The ALJ's determination that the claimant is entitled to SIBs for the first quarter from January 31 through April 30, 2020, is supported by sufficient evidence and is affirmed.

SECOND QUARTER SIBS

The ALJ noted in the discussion portion of her decision that the claimant filed an Application for [SIBs] (DWC-52) for the second quarter stating that the claimant made the requisite five job searches during each week of the qualifying period for the second quarter. The ALJ further noted that a review of the work search logs indicate that the claimant indicated he only made four work searches during week 13 of the qualifying

period for the second quarter. We note that the evidence additionally reflects that the claimant only made four job searches during week 10 of the qualifying period. The ALJ determined that the claimant is not entitled to SIBs for the second quarter because he did not make an active effort to obtain employment in each week of the qualifying period of the second quarter.

On March 27, 2020, the Commissioner of Workers' Compensation issued Commissioner's Bulletin # B-0012-20 that noted Governor Greg Abbott declared COVID-19 a statewide public health disaster. The bulletin states that it is in effect for the duration of the governor's COVID-19 declaration or until further notice from the Division. The bulletin notes that Governor Abbott approved the Division's request to suspend work search compliance standards for SIBs under Section 408.1415(a) and Rule 130.102(d).

We note that week 10 of the qualifying period of the second quarter of SIBs was from March 21 through March 27, 2020, and week 13 of the qualifying period of the second quarter of SIBs was from April 11 through April 17, 2020. The two weeks of the qualifying period for the second quarter of SIBs that the claimant failed to make five job searches were at a time that the work search compliance standards for SIBs were suspended due to the public health disaster. Accordingly, we reverse the ALJ's determination that the claimant is not entitled to SIBs for the second quarter, May 1 through July 30, 2020, and render a new decision that the claimant is entitled to SIBs for the second quarter, May 1 through July 30, 2020.

SUMMARY

We affirm the ALJ's determination that the claimant is entitled to SIBs for the first quarter from January 31 through April 30, 2020.

We reverse the ALJ's determination that the claimant is not entitled to SIBs for the second quarter, May 1 through July 30, 2020, and render a new decision that the claimant is entitled to SIBs for the second quarter, May 1 through July 30, 2020.

The true corporate name of the insurance carrier is **TRAVIS COUNTY (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**HONORABLE JUDGE SAMUEL BISCOE
700 LAVACA, SUITE 2.300
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge