

APPEAL NO. 201179  
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 consolidated contested case hearing (CCH) was held on July 9, 2020, in (city), Texas, with (administrative law judge) as the administrative law judge (ALJ). The ALJ decided in (Docket No. 1) that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter, December 11, 2019, through March 10, 2020. The ALJ decided in (Docket No. 2) that the claimant is entitled to SIBs for the fourth quarter, March 11 through June 9, 2020.

The claimant appealed the ALJ's determination that she was not entitled to SIBs for the third quarter. The claimant argues that she did not understand the proper way to conduct job searches for SIBs. The respondent/cross-appellant (carrier) appealed the ALJ's determination that the claimant is entitled to SIBs for the fourth quarter, March 11 through June 9, 2020. The carrier also appealed arguing the ALJ failed to make a finding regarding direct result for the qualifying period of the fourth quarter. Neither party responded to the other's appeal.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that: (1) the claimant sustained a compensable 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 third quarter of SIBs was from August 29 through November 27, 2019; (3) the qualifying period for the fourth quarter of SIBs was from November 28, 2019 through February 26, 2020; and (4) the claimant's county of residence, (County), requires three job searches each week of the qualifying period.

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 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(c) provides that an “injured employee has earned less than 80% of the employee’s average weekly wage (AWW) as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings.”

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 both the third and fourth quarter of SIBs was based on an active work search effort documented by job applications each week during the qualifying periods.

### **THIRD QUARTER SIBS**

The evidence reflects that the claimant did not perform three job searches in each week of the qualifying period for the third quarter of SIBs. The parties stipulated that for the claimant’s county of residence, three job searches are required in each week of the qualifying period. The claimant acknowledged in her appeal that she only performed two searches for two weeks (weeks four and eleven) of the qualifying period for the third quarter but argues she did not understand the proper way to conduct job searches.

The ALJ found that during the qualifying period for the third quarter, the claimant was unemployed, had some ability to work, and did not demonstrate an active effort to obtain employment by making the requisite number of job search contacts during each week of the qualifying period. The ALJ did not make a finding of fact regarding direct result for the third quarter of SIBs.

However, as previously noted, the claimant failed to make the requisite number of job searches in each week of the qualifying period for the third quarter of SIBs. Although the ALJ did not make a finding of fact regarding direct result for the qualifying period of the third quarter of SIBs, we are affirming the ALJ’s decision on the basis of the claimant’s failure to meet the active effort to obtain employment criterion.

The ALJ's determination that the claimant is not entitled to SIBs for the third quarter is supported by sufficient evidence and is affirmed.

#### **FOURTH QUARTER SIBS**

The claimant's application for SIBs in evidence for the fourth quarter reflects that the claimant conducted three job searches in each week of the qualifying period.

The carrier argued at the CCH that the compensable injury was limited to a fracture of the left big toe, bilateral knee contusions, and a right wrist sprain and that the claimant's unemployment was not a direct result of the compensable injury. The carrier contends in its appeal of the fourth quarter of SIBs that the ALJ failed to make a determination on whether the claimant's unemployment was a direct result of the compensable injury. The Appeals Panel has held that the "direct result" criteria may be established by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the preinjury employment. Appeals Panel Decision (APD) 030553, decided April 24, 2003. We have also held that to meet the direct result requirement, one only need prove that the unemployment was a direct result of the compensable injury. See APD 001786, decided September 13, 2000.

Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. Rule 142.16 provides that an ALJ's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due.

The ALJ found that during the qualifying period for the fourth quarter, the claimant was unemployed, had some ability to work, and demonstrated an active effort to obtain employment by making the requisite number of job search contacts during each week of the qualifying period. The carrier specifically argued at the CCH that the claimant could not meet the direct result criterion for SIBs. The ALJ's failure to make a finding of direct result was appealed by the carrier for the fourth quarter of SIBs. The ALJ failed to make a finding of direct result, which is a necessary element for SIBs entitlement. Accordingly, we reverse the ALJ's determination that the claimant is entitled to SIBs for the fourth quarter and remand the issue of SIBs entitlement for the fourth quarter to the ALJ for further action consistent with this decision. See APD 132339, decided December 12, 2013.

#### **SUMMARY**

The ALJ's determination that the claimant is not entitled to SIBs for the third quarter is affirmed.

The ALJ's determination that the claimant is entitled to SIBs for the fourth quarter is reversed and remanded to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to make a specific finding whether the claimant has earned less than 80% of the claimant's AWW as a direct result of the impairment from the compensable injury for the qualifying period of the fourth quarter of SIBs and then make a determination of entitlement to SIBs for the fourth 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 **MARKEL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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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