

APPEAL NO. 210061  
FILED MARCH 26, 2021

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 January 4, 2021, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter from October 9, 2020, through January 7, 2021.

The claimant appealed, disputing the ALJ's determination that she is not entitled to SIBs for the first quarter. The respondent (carrier) responded, urging affirmance of the disputed SIBs determination.

DECISION

Reversed and remanded.

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury), which resulted in an impairment rating (IR) of 15% or greater; (2) the claimant has not commuted any portion of the impairment income benefits (IIBs); and (3) the qualifying period for the first quarter of SIBs was from June 27, 2020, through September 25, 2020.

28 TEX. ADMIN. CODE § 142.13(c)(1) (Rule 142.13(c)(1)) provides, in pertinent part, that no later than 15 days after the benefit review conference, the parties shall exchange with one another the following information:

- (A) all medical reports and reports of expert witnesses who will testify at the hearing;
- (B) all medical records;
- (C) any witness statements;
- (D) the identity and location of any witness known to have knowledge of relevant facts; and
- (E) all photographs or other documents which a party intends to offer into evidence at the hearing.

The claimant submitted an Application for [SIBs] (DWC-52) for the first quarter into evidence at the CCH. The carrier objected to its admission into evidence,

contending that the application was not timely exchanged. The ALJ sustained the carrier's objection and excluded the claimant's first quarter SIBs application. Based on that evidentiary ruling, the ALJ found that no exhibits were admitted into evidence to support that the claimant completed and filed a DWC-52 for the first quarter and determined that the claimant was not entitled to SIBs for the first quarter. We note that although the ALJ excluded the claimant's first quarter SIBs application, the decision incorrectly reflects that all of the claimant's exhibits that were offered into evidence were admitted.

To obtain a reversal of a decision based on the ALJ's abuse of discretion in the admission or exclusion of evidence, an appellant must first show the admission or exclusion was in fact error, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. *Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.—San Antonio 1981, no writ).

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. Rules 130.100-130.109, effective July 1, 2009, govern the eligibility of SIBs.

Rule 130.102(b) provides that an injured employee who has an impairment rating of 15% or greater, who has not commuted any [IIBs], who has not permanently lost entitlement to [SIBs] and who has completed and filed [a DWC-52] in accordance with this subchapter is eligible to receive SIBs if, during the qualifying period, the injured employee: (1) has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has demonstrated an active effort to obtain employment in accordance with [Section] 408.1415 and this section.

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 the following work search requirements each week during the entire qualifying period:

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

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).

The claimant testified at the CCH that she made some job searches but did not document the searches because of Bulletin #B-0012-20. Additionally, the claimant testified that she filed the DWC-52 by faxing it to the number on the DWC-52 and that she sent the DWC-52 to the adjuster for the carrier. On appeal, the claimant alleges she filed the DWC-52 with the Division on October 2, 2020, and that she has a file-stamped copy that shows receipt as of 10:26 a.m.

Rule 130.103(a) provides:

- (a) Division Determination. For each injured employee with an [IR] of 15% of greater, and who has not commuted any [IIBs], the Division will make the determination of entitlement or non-entitlement for the first quarter of [SIBs]. This determination shall be made not later than the last day of the [IIBs] period and the notice of determination shall be sent to the injured employee and the carrier by first class mail, electronic transmission, or personal delivery.

Section 410.163(b) provides, in part, that an ALJ shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. We have previously required ALJs to take official notice of essential Division records where compliance with the 1989 Act is at issue. See Appeals Panel Decision (APD) 031441, decided July 23, 2003, and cases cited therein. The DWC-52 is an essential Division record necessary for the full development of the record in this case. Therefore, the exclusion of the claimant's DWC-52 for the first quarter was in error and was reasonably calculated to cause the rendition of an improper judgment. Accordingly, we hold that the ALJ abused his discretion. See *generally* APD 022702, decided December 16, 2002; APD 030295, decided March 27, 2003; APD 032619-s, decided November 13, 2003.

We reverse the ALJ's determination that the claimant is not entitled to SIBs for the first quarter from October 9, 2020, through January 7, 2021, and remand the case to the ALJ to admit the claimant's DWC-52 for the first quarter and make a determination regarding the claimant's entitlement to SIBs for the first 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 **XL INSURANCE AMERICA, INC.** 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