

APPEAL NO. 220632  
FILED JUNE 13, 2022

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 March 7, 2022, with the record closing on March 11, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter, November 11, 2021, through February 9, 2022. The appellant (carrier) appealed the ALJ's determination. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and as a result he had at least a 15% impairment rating; the claimant has not commuted any portion of his impairment income benefits; and the qualifying period for the fourth quarter of SIBs began on July 30, 2021, and ran through October 28, 2021. The claimant testified that the compensable injury sustained on (date of injury), resulted in an amputation of his right arm below the elbow.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142. Section 408.142 as amended by the 79th Legislature, effective September 1, 2005, references the requirements of Section 408.1415 regarding work search compliance standards. Section 408.1415(a) states, in part, 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 130.101(4) provides, in part, that a qualifying period that begins on or after July 1, 2009, is subject to the provisions of this subchapter, and a qualifying period that begins prior to July 1, 2009, remains subject to the rules in effect on the date the qualifying period begins.

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 [VRP] 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 [TWC];

(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.

The claimant's theory for entitlement to SIBs for the fourth quarter was based in part on an active work search. The ALJ stated in his discussion that the claimant was not required to conduct a work search during the first week of the fourth quarter qualifying period, July 30, 2021, through August 5, 2021, pursuant to Commissioner's Bulletin # B-0012-20. This is supported by sufficient evidence. On March 27, 2020, the Commissioner of Workers' Compensation issued Commissioner's Bulletin # B-0012-20, which, in part, suspended work search compliance standards for SIBs under Section 408.1415(a) and Rule 130.102(d) due to COVID-19. Work search compliance standards for SIBs resumed for each full week of qualifying periods beginning on and after August 2, 2021, pursuant to Commissioner's Bulletin # B-0018-21 dated July 2, 2021. The ALJ also stated that for weeks two and three of the qualifying period the claimant performed the required number of work searches, and therefore the ALJ found that the claimant demonstrated an active effort to obtain employment for those two weeks. The ALJ's finding is supported by sufficient evidence.

The claimant's other theory for entitlement to fourth quarter SIBs for the remaining weeks of the fourth quarter qualifying period is based on an active participation in a VRP. Section 408.1415(a)(1) provides that to be eligible to receive SIBs, a recipient must provide evidence satisfactory to the Division of Assistive and Rehabilitative Services (DARS)<sup>1</sup> or a private vocational rehabilitation provider. Rule 130.101(8), effective on April 15, 2018, defines a VRP as any program, provided by the TWC, a comparable federally-funded rehabilitation program in another state under the Rehabilitation Act of 1973, as amended, or a private provider of vocational rehabilitation services, for the provision of vocational rehabilitation services designed to assist the

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<sup>1</sup> Effective September 1, 2016, DARS was dissolved and its vocational rehabilitation services were transferred to TWC.

injured employee to return to work that includes a VRP. Rule 130.101(8) further provides that a VRP, also known as an Individual Plan for Employment (IPE) at TWC, includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

It is undisputed that the claimant's IPE required him to enroll as a full-time student and maintain a 2.0 grade point average (GPA). The evidence established that although the claimant had initially enrolled in 13 semester hours during the fourth quarter qualifying period, he did not complete enough semester hours to qualify as a full-time student. The evidence also established that the claimant was unable to maintain a 2.0 GPA during that time. The ALJ specifically found that the claimant complied with the IPE, explaining his rationale in his discussion as follows:

[The] [c]laimant must show that at the time of the fourth quarter qualifying period he was enrolled in at least 12 hours of schooling. He persuasively testified that he was enrolled in 13 hours during the qualifying period and took an incomplete in one course after the fourth quarter qualifying period. Since the school did not issue grades during the fourth quarter qualifying period, [the] [c]laimant argued that he could not be out of compliance with the IPE. This argument is persuasive. Additionally, in evidence is a letter from [(Ms. L-R)], [the] [c]laimant's vocational rehabilitation counsellor. [Ms. L-R] did not state that [the] [c]laimant was out of compliance during the fourth quarter qualifying period.

We disagree that the claimant was in compliance with the IPE. As noted above, the IPE required the claimant to be enrolled on a full-time basis and maintain a 2.0 GPA. The evidence reflects the claimant did neither of these things. The statement from Ms. L-R discussed by the ALJ is in evidence. Ms. L-R noted that from July 30, 2021, to October 28, 2021, the claimant was participating in vocational rehabilitation services and schooling, and that per policy the claimant maintained contact with his counselor. Ms. L-R also noted that the claimant had "been working to meet goals set up by his [IPE] that he and VRC composed." The ALJ is correct that Ms. L-R did not state the claimant was out of compliance during the fourth quarter qualifying period. However, Ms. L-R did not state that the claimant was in compliance during that period, and we do not view her statement as sufficient evidence to establish the claimant was in compliance with his IPE during the fourth quarter qualifying period. Under the facts of this case, the evidence did not establish that the claimant was in compliance with the IPE, and as such the claimant did not demonstrate an active effort to obtain employment under Rule 130.102(d)(1). Accordingly, we reverse the ALJ's

determination that the claimant is entitled to SIBs for the fourth quarter, November 11, 2021, through February 9, 2022.

Rule 130.102(d)(2) provides that an injured employee who has not met at least one of the work search requirements in any week during the qualifying period is not entitled to SIBs unless the injured employee can demonstrate that he or she had reasonable grounds for failing to comply with the work search requirements under this section. The ALJ made no finding in his Decision and Order as to whether the claimant had reasonable grounds under the evidence presented for failing to comply with work search requirements during the weeks the claimant went to school. Accordingly, we remand the issue of whether the claimant is entitled to SIBs for the fourth quarter, November 11, 2021, through February 9, 2022, to the ALJ for further action consistent with this decision.

### **SUMMARY**

We reverse the ALJ's determination that the claimant is entitled to SIBs for the fourth quarter, November 11, 2021, through February 9, 2022, and we remand the issue of whether the claimant is entitled to SIBs for the fourth quarter, November 11, 2021, through February 9, 2022, to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to consider all of the evidence, make findings of fact regarding whether the claimant has demonstrated reasonable grounds for failing to comply with the work search requirements during the weeks the claimant relied on participation in a VRP under Rule 130.102(d)(1), and render conclusions of law and a decision regarding whether the claimant is entitled to SIBs for the fourth quarter, November 11, 2021, through February 9, 2022, consistent with this decision.

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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE 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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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge