

APPEAL NO. 220930  
FILED JULY 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 (CCH) was held on April 20, 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 appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, January 21, 2016, through April 20, 2016; second quarter, April 21, 2016, through July 20, 2016; or third quarter, July 21, 2016, through October 19, 2016. The claimant appealed the ALJ's determinations. The carrier (respondent) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury with a 15% or greater impairment rating (IR); and (2) the claimant's average weekly wage (AWW) is \$742.18 for the 13-week period prior to the date of injury. The claimant testified that he was a yard foreman and he fractured his right hip on (date of injury), when he fell onto his right side.

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(b) provides that an injured employee who has an IR of 15% or greater, who has not commuted any impairment income benefits, who has not

permanently lost entitlement to [SIBs] and who has completed and filed an Application for [SIBs] (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 AWW 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.

The ALJ determined that the claimant is not entitled to SIBs for the first, second, or third quarter. The ALJ's determinations are supported by sufficient evidence and are affirmed. However, a decision is being written to clarify a statement made by the ALJ in his discussion.

The ALJ stated in his discussion that the claimant argued he had a total inability to work during the qualifying periods because "he had a total knee replacement." However, the evidence reflects that the claimant did not undergo a total knee replacement, but a total hip replacement. Under the circumstances of this case, we view the ALJ's statement in his discussion that the claimant had a total knee replacement instead of a total hip replacement as a typographical error that does not affect the outcome of the case. See Appeals Panel Decision 220307, decided April 20, 2022. The ALJ found that the claimant failed to provide a narrative statement from a doctor which specifically explains how the injury caused a total inability to work during the qualifying periods at issue. This finding is supported by sufficient evidence.

The ALJ additionally noted in his discussion that pursuant to Rule 130.102, the claimant must show that he earned less than 80% of his AWW. He stated that the evidence established that the claimant returned to work on June 10, 2013, was paid the same hourly rate of pay, and received incremental yearly raises. The ALJ found that the claimant did not prove that he earned less than 80% of his AWW and that finding is supported by sufficient evidence.

Accordingly, we affirm the ALJ's determinations that the claimant is not entitled to SIBs for the first, second, or third quarter.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** 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.**

---

Cristina Beceiro  
Appeals Judge

CONCUR:

---

Carisa Space-Beam  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge