

APPEAL NO. 221944
JANUARY 20, 2023

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 November 3, 2022, 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 (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter, August 9, 2022, through November 7, 2022; and (2) the appellant (carrier) did not waive its right to contest the claimant's entitlement to SIBs for the sixth quarter by failing to timely request a benefit review conference (BRC). The carrier appealed the ALJ's determination regarding entitlement to SIBs for the sixth quarter. The claimant responded, urging affirmance of the appealed determination.

The ALJ's determination that the carrier did not waive its right to contest the claimant's entitlement to SIBs for the sixth quarter by failing to timely request a BRC was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which resulted in an impairment rating of 15% or higher; the claimant has not commuted any portion of the impairment income benefits; and the qualifying period for the sixth quarter of SIBs was from April 27, 2022, through July 26, 2022.

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 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 sixth quarter was based, in part, on an active work search and, in part, on returning to work commensurate to her abilities. The ALJ stated in his discussion, and the evidence reflects, that the claimant was employed during the qualifying period until June 1, 2022, which is the first day of week six of the qualifying period. At that time the claimant was terminated from her job. The ALJ found that the claimant earned less than 80% of her average weekly wage as a direct result of her impairment from the compensable injury during the qualifying period for the sixth quarter of SIBs. That finding is supported by sufficient evidence. The ALJ further stated that the claimant's Application for SIBs (DWC-52) then shows that the claimant performed the required number of work searches during the qualifying period or contacted the TWC. However, the DWC-52 in evidence indicates that the claimant did not make any work search efforts during week seven of the qualifying period, June 8, 2022, through June 14, 2022. Additionally, the claimant was no longer working at this time. As there is no evidence that the claimant made an active effort to obtain employment during week 7 of the qualifying period, we reverse the ALJ's determination that the claimant is entitled to SIBs for the sixth quarter, August 9, 2022, through November 7, 2022, and we render a new decision that the claimant is not entitled to SIBs for the sixth quarter, August 9, 2022, through November 7, 2022.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge