

APPEAL NO. 230080  
FILED MARCH 9, 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 December 1, 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 not entitled to supplemental income benefits (SIBs) for the third quarter, April 24, 2022, through July 23, 2022; (2) the claimant is entitled to SIBs for the fourth quarter, July 24, 2022, through October 22, 2022; and (3) the appellant (carrier) timely filed a request for a benefit review conference (BRC) and did not waive its right to contest the claimant's entitlement to SIBs for the third quarter. The carrier appealed the ALJ's determination regarding fourth quarter SIBs entitlement. There is no response from the claimant in the appeal file.

The ALJ's determinations that: the claimant is not entitled to SIBs for the third quarter, April 24, 2022, through July 23, 2022; and the carrier timely filed a request for a BRC and did not waive its right to contest the claimant's entitlement to SIBs for the third quarter were not appealed have become final pursuant to Section 410.169.

**DECISION**

Reversed and remanded.

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury), that resulted in an impairment rating of 15% or greater; (2) the claimant has not commuted any portion of his impairment income benefits; (3) the qualifying period for the third quarter was from January 10, 2022, through April 10, 2022; and (4) the qualifying period for the fourth quarter was from April 11, 2022, through July 10, 2022. The claimant was injured on (date of injury), when he fell off a ladder.

**SIBS**

The ALJ determined that the claimant is entitled to SIBs for the fourth quarter, July 24, 2022, through October 22, 2022, based on a total inability to work. In Finding of Fact No. 3.H., the ALJ found that (Dr. V) narrative for the fourth quarter of SIBs persuasively explained how the compensable injury caused an inability to perform any type of work in any capacity. He also determined in Conclusion of Law No. 4 that the claimant is entitled to SIBs for the fourth quarter, July 24, 2022, through October 22, 2022. However, in his discussion of the evidence, the ALJ stated that, "[b]ased on the evidence presented, [the] [c]laimant did not perform the required number of work search

efforts each week of the qualifying period for the [third] or [fourth] SIBs quarters. In addition, the narratives from Dr. [V] did not persuasively explain how the compensable injury caused an inability to perform any type of work in any capacity.” The ALJ’s discussion of the evidence is inconsistent with his determination of entitlement to fourth quarter SIBs. Accordingly, we reverse the ALJ’s determination that the claimant is entitled to SIBs for the fourth quarter, July 24, 2022, through October 22, 2022, and remand the issue of whether the claimant is entitled to SIBs for the fourth quarter, July 24, 2022, through October 22, 2022, to the ALJ for further action consistent with this decision. See Appeals Panel Decision (APD) 211383, decided October 7, 2021; and APD 210422, decided May 26, 2021.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to make a determination regarding whether the claimant is entitled to SIBs for the fourth quarter, July 24, 2022, through October 22, 2022, that is supported by the evidence and to clarify the inconsistency between his findings and determinations and the discussion of the evidence.

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 Texas Department of Insurance, Division of Workers’ Compensation, 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 **AMERICAN ZURICH 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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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge