

APPEAL NO. 230331  
FILED APRIL 14, 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 January 11, 2023, with the record closing on January 12, 2023, 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 appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, August 3, 2022, through November 1, 2022; and (2) the respondent (self-insured) is relieved of liability for SIBs because of the claimant's failure to timely file an Application for SIBs (DWC-52) for the first quarter beginning on August 3, 2022, and continuing through August 31, 2022, but not thereafter through November 1, 2022.

The claimant appealed, disputing the ALJ's SIBs determination and the ALJ's determination that the self-insured is relieved of liability for SIBs beginning on August 3, 2022, and continuing through August 31, 2022, because of the claimant's failure to timely file a SIBs application for the first quarter. The self-insured responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on July 9, 2020, in the form of at least a left shoulder sprain/strain, cervical spine sprain/strain, a lumbar spine sprain/strain, a concussion, a left cheek laceration, headaches, dizziness, and left ear ringing; (2) the claimant reached maximum medical improvement on September 21, 2021; (3) the claimant's impairment rating is 15%; (4) the claimant did not elect to commute any portion of his impairment income benefits; (5) the qualifying period for the first quarter of SIBs was from April 21, 2022, and ended on July 20, 2022; and (6) the first quarter of SIBs began on August 3, 2022, and ended on November 1, 2022. The claimant was injured on July 9, 2020, while working as a bus driver/shop assistant when a jack he and his co-workers were using to lift a bus moved and hit him in the face and left shoulder, knocking him unconscious and causing him to hit his back on another bus.

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).

## **SIBS**

The ALJ's determination that the claimant is not entitled to SIBs for the first quarter, August 3, 2022, through November 1, 2022, is supported by sufficient evidence and is affirmed.

### **TIMELY FILING OF SIBS APPLICATION**

Section 408.143(c) provides that failure to file a statement under that section relieves the insurance carrier of liability for SIBs for the period during which a statement is not filed. 28 Tex. Admin. Code § 130.104(c)(Rule 130.104(c)) provides, in part, that except as otherwise provided in that section, a DWC-52 shall be filed no later than seven days before, and no earlier than 20 days before, the beginning of the quarter for which the injured employee is applying for SIBs. Rule 130.105(a) provides, in part, that an injured employee who does not timely file a DWC-52 with the insurance carrier shall not receive SIBs for the period of time between the beginning date of the quarter and the date on which the form was received by the insurance carrier. Rule 130.105(a) does contain some exceptions to the timely filing of the SIBs application, but none of those exceptions were shown to apply in this case.

The ALJ determined that the self-insured is relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the first quarter beginning on August 3, 2022, and continuing through August 31, 2022, but not thereafter through November 1, 2022. The ALJ made a finding of fact that the claimant filed his DWC-52 for the first quarter with the Texas Department of Insurance, Division of Workers' Compensation (Division) on September 1, 2022. That finding is supported by sufficient evidence and is affirmed.

Section 408.143(a) provides that after the Division's initial determination of SIBs, the employee must file a statement. We note that by its plain language, Section 408.143(c), which provides that the claimant's failure to timely file a DWC-52 relieves the carrier of liability for the period during which the statement is not filed, does not apply to the first quarter. See Appeals Panel Decision (APD) 030285, decided March 11, 2003, and APD 191783, decided November 7, 2019. Therefore, the ALJ improperly determined that the self-insured would be relieved of liability for the first quarter beginning on August 3, 2022, and continuing through August 31, 2022, because of the claimant's late filing. Although it does not change the outcome of this case, we reverse that portion of the ALJ's determination that the self-insured is relieved of liability for SIBs

because of the claimant's failure to timely file a DWC-52 for the first quarter beginning on August 3, 2022, and continuing through August 31, 2022, and we render a new decision that the self-insured is not relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the first quarter.

### **SUMMARY**

We affirm the ALJ's determination that the claimant is not entitled to SIBs for the first quarter, August 3, 2022, through November 1, 2022.

We reverse that portion of the ALJ's determination that the self-insured is relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the first quarter beginning on August 3, 2022, and continuing through August 31, 2022, and we render a new decision that the self-insured is not relieved of liability for SIBs because of the claimant's failure to timely file a DWC-52 for the first quarter.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**(NAME)**  
**(ADDRESS)**  
**(CITY), TEXAS (ZIP CODE).**

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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