

APPEAL NO. 231645
FILED DECEMBER 28, 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 September 28, 2023, with the record closing on October 9, 2023, 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 seventh quarter, March 28, 2023, through June 26, 2023, or the eighth quarter, June 27, 2023, through September 25, 2023. The claimant appealed, disputing the ALJ's determination. The respondent (carrier) responded, urging affirmance of the ALJ's determination.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of at least the conditions accepted by the carrier of displaced fracture of the medial condyle of the right tibia; the claimant reached maximum medical improvement on December 16, 2019, with an assigned impairment rating of 31%; the qualifying period for the seventh quarter of SIBs was December 14, 2022, through March 14, 2023; the qualifying period for the eighth quarter of SIBs was March 15, 2023, through June 13, 2023; and the number of active work search efforts required during the qualifying periods for the seventh and eighth quarters to qualify for SIBs in the county of the claimant's residence during the qualifying periods was five per week. The claimant, an incident manager for the employer, injured her right knee on (date of injury), when she fell while walking across a parking lot to her car.

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).

SEVENTH QUARTER SIBS

The ALJ's determination that the claimant is not entitled to SIBs for the seventh quarter, March 28, 2023, through June 26, 2023, is supported by sufficient evidence and is affirmed.

EIGHTH QUARTER SIBS

Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. 28 Tex. Admin. Code § 142.16 (Rule 142.16) provides that an ALJ's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due.

The claimant's theory of entitlement to SIBs for the seventh and eighth quarters was based on making the requisite number of work search contacts each week of the seventh and eighth quarter qualifying periods. The claimant specifically pointed out on appeal that the ALJ failed to discuss or make any findings of fact regarding her work search efforts during the qualifying period for the eighth quarter of SIBs. The ALJ made findings of fact that the claimant was not unemployed as a direct result of her impairment from the compensable injury during the qualifying periods for the seventh and eighth quarters of SIBs, and also made a finding of fact that the claimant did not make an active effort to obtain employment each week during the entire qualifying period for the seventh quarter of SIBs. However, the ALJ failed to make a finding of fact regarding the claimant's work search efforts during the qualifying period for the eighth quarter of SIBs. Because the ALJ's decision contains no findings of fact regarding the claimant's work search efforts during the eighth quarter qualifying period, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that the claimant is not entitled to SIBs for the eighth quarter, June 27, 2023, through September 25, 2023, as being incomplete, and we remand the issue of whether the claimant is entitled to SIBs for the eighth quarter, June 27, 2023, through September 25, 2023, to the ALJ for further action consistent with this decision. See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 180839, decided June 4, 2018; and APD 181357, decided July 30, 2018.

SUMMARY

We affirm the ALJ's determination that the claimant is not entitled to SIBs for the seventh quarter, March 28, 2023, through June 26, 2023.

We reverse the ALJ's determination that the claimant is not entitled to SIBs for the eighth quarter, June 27, 2023, through September 25, 2023, as being incomplete, and we remand the issue of whether the claimant is entitled to SIBs for the eighth

quarter, June 27, 2023, through September 25, 2023, to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the ALJ is to make findings of fact and conclusions of law regarding the claimant's work search efforts during the qualifying period for the eighth quarter of SIBs. The ALJ is then to make findings of fact, conclusions of law, and a decision as to whether the claimant is entitled to SIBs for the eighth quarter, June 27, 2023, through September 25, 2023.

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 **ATLANTIC SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
D/B/A CSC LAWYERS, INC.
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge