

APPEAL NO. 220175-s
FILED MARCH 24, 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 was held on December 30, 2021, 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/cross-respondent (self-insured) is entitled to redesignate impairment income benefits (IIBs) paid after June 10, 2016, as lifetime income benefits (LIBs); and (2) the self-insured is not entitled to redesignate supplemental income benefits (SIBs) paid after June 10, 2016, as LIBs.

The self-insured appealed the ALJ's determination that it is not entitled to redesignate supplemental income benefits (SIBs) paid after June 10, 2016, as LIBs. The respondent/cross-appellant (claimant) responded, urging affirmance of the determination disputed by the self-insured.

The claimant appealed the ALJ's determination that the self-insured is entitled to redesignate IIBs paid after June 10, 2016, as LIBs. The self-insured responded, urging affirmance of the determination disputed by the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury; (2) the claimant is entitled to LIBs with an accrual date of June 10, 2016; and (3) the claimant was paid temporary income benefits (TIBs), IIBs, and SIBs through 401 weeks. The evidence reflected that the claimant was injured when his head was trapped between a three-point trailer hitch and the bottom of the cab of a tractor. The claimant was assessed an 81% impairment rating. At issue was whether the self-insured could redesignate previous payments of IIBs and SIBs as LIBs after June 10, 2016.

The ALJ is the sole judge of the weight and credibility to 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).

REDESIGNATION OF IIBS

The ALJ's determination that the self-insured is entitled to redesignate IIBs paid after June 10, 2016, as LIBs is supported by sufficient evidence and is affirmed.

REDESIGNATION OF SIBS

Section 408.161(a)(6) provides that LIBs are paid until the death of the employee for a physically traumatic injury to the brain resulting in incurable insanity or imbecility. Section 408.161(c) provides that subject to Section 408.061 the amount of LIBs is equal to 75% of the employee's average weekly wage and that benefits being paid shall be increased at a rate of 3% a year notwithstanding Section 408.061. LIBs is the greatest income benefit a worker can receive under the 1989 Act.

The Court of Appeals in *Mid-Century Insurance Company v. Texas Workers' Compensation Commission*, 187 S.W.3d 754 (Tex. App.—Austin 2006, no pet.) held that:

An employee is eligible to receive LIBs on the date that employee suffers from one of the conditions specified in [S]ection 408.161. Section 408.161 does not permit payment of LIBs prior to that date. Once an employee is adjudicated eligible to receive LIBs, however, LIBs should be paid retroactively to the date the employee first became eligible.

See also Appeals Panel Decision (APD) 111515-s, decided December 8, 2011.

In her discussion of the evidence, the ALJ stated that LIBs are different from SIBs, which are payable for an inability to earn a pre-injury wage, noting that the claimant could return to work and still receive LIBs. The ALJ concluded that LIBs are paid for specifically listed medical conditions, and no express provision allows for a reduction or elimination of the benefits based on previous amounts paid for SIBs. The ALJ determined that the self-insured was not entitled to redesignate SIBs paid after June 10, 2016, as LIBs. We disagree.

In APD 000508, decided April 24, 2000, the Appeals Panel noted the ALJ's determination that injured employees are not entitled to concurrently draw LIBs and IIBs appears to be a correct statement under the law and perceived no error with the ALJ's general conclusion. The Appeals Panel further stated "[w]e note that if an injured worker who received a lump sum IIBs payment is later determined to be entitled to LIBs for the same injury, then the insurance carrier involved would generally be entitled to a credit and the IIBs already paid would likely be credited as an underpayment of accrued

LIBs.” Although APD 000508 specifically applies to IIBs, we view the reasoning for the holding in this case to apply equally to the redesignation of SIBs.

Redesignation is not a recoupment of benefits; rather, redesignation is a recharacterization of the benefits paid. We see the instant case as it applies to the redesignation of SIBs payments as LIBs as analogous to the situation in which a carrier pays TIBs to the claimant after what is later determined to be the maximum medical improvement (MMI) date. Generally, under those facts, “TIBs payments made after the MMI date are redesignated as IIBs, and the carrier can take credit as IIBs those income benefits it paid to the claimant as TIBs after the MMI date.” See APD 110692, decided July 20, 2011.

Although it was initially determined at the administrative level that the claimant was not entitled to LIBs, a district court determined that the claimant was entitled to LIBs. It is undisputed that the accrual date of the claimant’s entitlement to LIBs was determined to be June 10, 2016. As previously noted, the parties stipulated that the claimant was paid TIBs, IIBs, and SIBs through 401 weeks. We hold that the self-insured can redesignate SIBs payments made to the claimant after June 10, 2016, as LIBs. Accordingly, we reverse the ALJ’s determination that the self-insured is not entitled to redesignate SIBs paid after June 10, 2016, as LIBs and render a new decision that the self-insured is entitled to redesignate SIBs paid after June 10, 2016, as LIBs.

SUMMARY

We affirm the ALJ’s determination that the self-insured is entitled to redesignate IIBs paid after June 10, 2016, as LIBs.

We reverse the ALJ’s determination that the self-insured is not entitled to redesignate SIBs paid after June 10, 2016, as LIBs and render a new decision that the self-insured is entitled to redesignate SIBs paid after June 10, 2016, as LIBs.

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).

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge