APPEAL NO. 990173

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 13, 1999. The filing period for the sixth quarter for supplemental income benefits (SIBS) began on August 7, 1998, and ended on November 5, 1998. The hearing officer determined that the appellant (claimant) completed training to repair computers and that during the filing period for the sixth quarter the claimant applied for approximately 42 positions in the computer industry, that he did not apply for positions in any field other than the computer industry although he was qualified to do other work, that he did not apply for positions to which he was referred by the respondent's (carrier) rehabilitation counselor, that he did not make a good faith effort to seek employment commensurate with his ability to work, and that his unemployment was not a direct result of his impairment from the compensable injury. She concluded that the claimant is not entitled to SIBS for the sixth quarter. The claimant appealed, stating that he was not permitted to present all of the evidence he had and was not permitted to contest information given in the carrier's closing statement. The carrier responded, stated that the claimant did not identify the evidence or information that he was not permitted to present, urged that the claimant has not shown error by the hearing officer, contended that the evidence is sufficient to support the determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We affirm.

We first address the claimant's contention that he was not permitted to present all of his evidence. At the CCH, the claimant offered a computer printout of 49 computer transmissions beginning on July 24, 1998, and ending on December 16, 1998. Forty of the transmissions were made during the filing period for SIBS for the sixth quarter. The carrier objected to the admission of the document, stated that it had not been seen before the date of the hearing, and urged that it had not been timely exchanged. The claimant stated that he did not exchange information after the benefit review conference; that he waited until he received a package from the carrier; that he did not know that he would need the information until after he received the package from the carrier; that he had a problem with his computer on January 5, 1999, and was unable to retrieve the needed information; that the day before the hearing he found a program that permitted him to retrieve the information from backup; that he obtained the information that day; and that he did not know that he had to send things to the carrier earlier. The ombudsman assisting the claimant stated that on January 7, 1999, she spoke with the claimant on the telephone and suggested that he develop a list of places to which he had used his computer to transmit applications. The hearing officer sustained the objection to the offered document and did not admit it into evidence.

A party who fails to disclose information or documents by the times and as required by the 1989 Act and Texas Workers' Compensation Commission (Commission) rules may

not introduce the information at the CCH unless the hearing officer finds good cause for not having disclosed the documents as required by the law and the rules. One requirement is to provide the information or document no later than 15 days after the benefit review conference and to exchange additional documentary evidence as it becomes available. Sections 410.160 and 410.161 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13)). Evidentiary rulings by the hearing officer on documents which are admitted or not admitted are generally viewed as being discretionary and will be reversed only if there is an abuse of discretion. Texas Workers' Compensation Commission Appeal No. 941414, decided December 6, 1994. In determining whether there was an abuse of discretion, the Appeals Panel looks to see if the hearing officer acted without reference to any guiding rules or principles. Appeal No. 941414. To obtain reversal of a judgment based upon error of the hearing officer's admission or exclusion of evidence, the appellant must show first, that the determination was in fact error, and second, that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992. The hearing officer did not abuse her discretion in not admitting the document and did not commit error in not admitting it.

We next address the contention of the claimant that he was not permitted to contest information given in the closing statement of the attorney representing the carrier. After the claimant testified at the CCH, the hearing officer asked the claimant if there was anything else that he wanted to say and he responded "No, Ma'am." Immediately after that the ombudsman made a closing statement for the claimant, the attorney representing the carrier made a closing statement, and the ombudsman made a short statement in response. The closing statement made by the attorney representing the carrier was based on evidence in the record. There was no objection to the closing statement made by the attorney representing the carrier, and there was no request to present additional information. We perceive no error related to the closing statements made at the CCH.

Since the claimant said that he was appealing the decision of the hearing officer and we reviewed the complete record of the CCH, we also address the sufficiency of the evidence to support the decision of the hearing officer. The Decision and Order of the hearing officer contains a statement of the evidence, the determinations of the hearing officer set forth earlier in this decision provide an indication of the efforts of the claimant during the filing period to meet the criteria for eligibility for SIBS, and a summary of the evidence will not be repeated in this decision. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. We have considered the evidence, and the factual determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Thomas A. Knapp
Appeals Judge