APPEAL NO. 010972
FILED JUNE 8, 2001

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 April 12, 2001. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th quarter because he did not make a good faith effort to look for work commensurate with his ability to work. In his appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. In addition, the carrier asks that we not consider evidence attached to the claimant's appeal which was not admitted at the hearing.

DECISION

Affirmed.

The hearing officer determined that the claimant did not make a good faith effort to look for work commensurate with his ability to work in the qualifying period for the 12th quarter of SIBs. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) of Rule 130.102 provides, in relevant part, that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." Rule 130.102(e) also includes a nonexhaustive list of factors to be considered in determining whether the injured employee has made a good faith job search.

The issue of whether the claimant made a good faith job search in the qualifying period for the 12th quarter was a question of fact for the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviews the evidence before her and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The factors emphasized by the hearing officer in evaluating the nature of the claimant's search are specifically listed in Rule 130.102(e) as proper factors to consider in resolving the good faith issue. Simply put, the hearing officer was not persuaded that when the claimant's job search efforts were considered as a whole, they demonstrated that he made a good faith effort to look for work in the qualifying period. Nothing in our review of the record demonstrates that the hearing officer's determination in that regard is so contrary to the great weight and preponderance

of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the good faith determination, or the determination that the claimant is not entitled to SIBs for the 12th quarter, on appeal. Cain, *supra*.

The claimant attached six pages to his appeal. Three of the pages were admitted in evidence in Carrier's Exhibit No. 4; however, the other three pages were not admitted in evidence at the hearing. We will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The documents attached to the claimant's appeal that were not admitted at the hearing, do not meet those criteria; thus, they were not considered on appeal.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge