

APPEAL NO. 011751
FILED AUGUST 28, 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 (CCH) was held on July 6, 2001. The hearing officer determined that the respondent (claimant) had no ability to work and was entitled to supplemental income benefits (SIBs) for his sixth quarter of eligibility.

The appellant (carrier) appeals that this decision is not supported by the evidence. The carrier further argues that the hearing officer committed reversible error in excluding one of its exhibits on the basis of relevancy. The claimant responds with argument on the law and facts that support the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

SIBs Entitlement

The hearing officer did not err in her decision that the claimant met the eligibility criteria for SIBs. We cannot agree that there is another record that conclusively "shows" an ability to work such that the hearing officer's finding on inability is against the great weight and preponderance of the evidence. There are a few narratives pertinent to the qualifying period in issue that could be found by the hearing officer to meet the standard set out in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)).

Exclusion of Evidence

We evaluate the exclusion of evidence by a hearing officer by an abuse of discretion standard. Concerning the exclusion of a statement from the regional director of a charitable employer of the disabled, we question whether the hearing officer's exclusion of this document as "irrelevant" to the issues at hand was the most solid basis for exclusion. Information about jobs in the community provided to the disabled may always be said to be "relevant" to SIBs. However, this statement is neither signed nor sworn, and could have been properly excluded on that basis. We cannot agree that there was an abuse of discretion.

We observe that the statement makes no evaluation of the claimant nor does it make any commitments of employment. No specific and currently available jobs are identified. It is, at best, a generalized statement of hiring practices and types of disabilities held by employees of this organization. Therefore, we cannot agree that even if the document were excluded in error, exclusion would constitute reversible error, as the hearing officer need not have given it great weight in the issues dealt with in the CCH.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE WEST** and the name and address of its registered agent for service of process is

**C.T. CORPORATION SYSTEM
350 N. St. Paul Street
Dallas, Texas 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge