APPEAL NO. 012049
FILED SEPTEMBER 27, 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 August 8, 2001. The appellant/cross-respondent (carrier) appeals the hearing officer's determination that the respondent/cross-appellant's (claimant) compensable injury of _____ extends to and includes a closed head injury, depression and neurocognitive deficiencies. The claimant appeals the hearing officer's determination that he is not entitled to supplemental income benefits (SIBs) for the third quarter (April 12 through July 11, 2000), and contends that the hearing officer erred in admitting the carrier's exhibits. The carrier responded to the claimant's cross-appeal, arguing that the exhibits were properly admitted and that the determination of nonentitlement to SIBs for the third quarter is correct. The claimant did not respond to the carrier's appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's _____, compensable injury extends to and includes his closed head injury, depression, and neurocognitive deficiencies. The medical records in evidence and the claimant's testimony support the hearing officer's factual findings concerning extent of injury.

The hearing officer did not err in finding that the claimant was not entitled to SIBs for the third quarter. The claimant contended that he had a complete inability to work at any job during the qualifying period for the third quarter (December 30, 1999, through March 29, 2000). The standard of what constitutes a good faith effort to obtain employment in cases of a total inability to work was specifically defined and addressed after January 31, 1999, in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)). Rule 130.102(d)(4) provides that the statutory good faith requirement may be met if the employee

> (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The hearing officer's determination that the claimant had an ability to work is supported by records from three doctors, which show that the claimant had some ability to work.

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 issues described above were factual issues for the hearing officer. We will reverse a factual determination of a hearing officer

only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's determinations.

The claimant also asserts that the hearing officer committed error by admitting the carrier exhibits which were not properly exchanged. Rule 142.13(c) requires that the parties exchange documentary evidence no later than 15 days after the benefit review conference (BRC). At the CCH, the claimant objected to the admission of the carrier's exhibits on the grounds that they were not timely exchanged. The hearing officer overruled the objection and admitted the carrier's exhibits based on the representation of the carrier's attorney that he had timely exchanged the documents at a previous BRC on July 11, 2000. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain a reversal of a judgment based upon the hearing officer's abuse of discretion in admitting evidence, an appellant must first show that the admission was in fact an abuse of discretion, and, also, that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). The hearing officer did not abuse her discretion in admitting the carrier's exhibits.

The decision and order of the hearing officer are affirmed.

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

JOSEPH A. YURKOVICH
1431 GREENWAY DRIVE, SUITE 450
IRVING, TEXAS 75038.

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge