

APPEAL NO. 012319
FILED NOVEMBER 13, 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 21, 2001. The appellant (claimant) appeals the hearing officer's determination that he is not entitled to supplemental income benefits (SIBs) for the 15th and 16th quarters. The respondent (carrier) responds, urging affirmance. The hearing officer's determination that the claimant's unemployment was a direct result of his impairment has not been appealed and has become final.

DECISION

Affirmed.

The hearing officer did not err in holding that the claimant was not entitled to SIBs for the 15th and 16th quarters. Based upon the evidence presented, the hearing officer determined that the claimant was able to work during the qualifying periods for the 15th and 16th quarters, but did not make a good faith effort to obtain employment commensurate with his ability to work. It is undisputed that during the qualifying period for the 16th quarter, the claimant did not seek employment at all. Although the claimant attempted to fulfill a job search requirement for entitlement to SIBs for the 15th quarter, the hearing officer noted that the claimant did not make a good faith effort to find work commensurate with his ability and sought employment only to qualify for SIBs. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The claimant also appealed the hearing officer's decision to exclude evidence that was not timely exchanged pursuant to Section 410.161. To obtain reversal of a judgment based on the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion 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. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see *also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We find no abuse of discretion in the hearing officer's exclusion of the documents untimely exchanged.

The claimant also appeals the stipulated finding of fact that his employer had workers' compensation insurance coverage with the carrier. We note that the claimant raised his concern at the CCH that another carrier was previously handling his claim, but after some discussion and explanation to the claimant, he stipulated at the CCH that the employer had insurance with "Ace Insurance Company of Texas." Parties may agree on the truth of specific facts by stipulation and by this method limit the issues to be tried. Geo-

Western Petroleum Development, Inc. v. Mitchell, 717 S.W.2d 734 (Tex. App.-Waco 1986, no writ). Such stipulations are binding on the parties. Id. Concerning the stipulated fact, Section 410.166 provides that an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Consequently, the claimant is bound by that stipulation.

The hearing officer's decision and order are affirmed.

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

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST
IRVING, TEXAS 75063.**

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge