

APPEAL NO. 012380
FILED NOVEMBER 20, 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 September 10, 2001. The three issues reported from the benefit review conference (BRC) concerned the respondent's (claimant) entitlement to supplemental income benefits (SIBs) for the first, second, and third quarters. The parties stipulated that the claimant withdraws his request for SIBs for the first and second quarters. The hearing officer made Finding of Fact No. 6 that the "Claimant did not adequately document his contacts during the qualifying period for the third quarter." The hearing officer then concluded that the claimant is not entitled to SIBs for the first and second quarter and that the "case is not ripe for a determination of benefits for the third quarter." He proceeded to "remand the case to the field office to allow Claimant to document his job contacts and establish dates the contacts occurred if possible." The appellant (carrier) requested review of the hearing officer's decision and order, alleging error in Findings of Fact Nos. 3, 4, 5, and 7, and Conclusion of Law No. 4, as well as pointing out that the hearing officer omitted the name of the carrier's witness from the witness list in the decision and order. The claimant did not respond to the carrier's appeal.

DECISION

Reformed, affirmed in part, decision reversed, and a new decision rendered.

We first correct the hearing officer's omission and reform the decision and order to add the name "JH" to the witness list. According to the tapes of the CCH, JH testified via telephone from approximately 5:08 p.m. to 5:40 p.m., September 10, 2001.

As to the carrier's appeal of Findings of Fact Nos 3, 4, 5, and 7, these were factual matters which are within the hearing officer's province to determine. There was conflicting evidence presented, and under Section 410.165(a) the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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 decline to substitute our opinion of the evidence for that of the hearing officer on these factual determinations.

Despite our agreement with the hearing officer on the appealed factual matters, we must reverse the conclusion of the hearing officer. After the stipulation that withdrew the request for first and second quarter SIBs, the only issue left for determination by the

hearing officer was the claimant's entitlement to third quarter SIBs. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(b)(2) provides that an injured employee who has met all of the other eligibility requirements is entitled to SIBs for a given quarter if he or she has also made a good faith effort to obtain employment commensurate with the employee's ability to work. Rule 130.102(e) provides, in part, that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, 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. In this case, as the hearing officer found, the "Claimant did not adequately document his contacts during the qualifying period for the third quarter." None of the other criteria for SIBs entitlement were in issue, so this determination as to documentation of the claimant's job search is dispositive of the entitlement question. With the evidence in this posture, the hearing officer could only conclude that the claimant had failed to meet his burden to establish entitlement to SIBs. The hearing officer is without authority to remand a case for a party to gather more evidence. We have on several occasions told hearing officers that they cannot send a case back to a BRC. Most recently, in Texas Workers' Compensation Commission Appeal No. 011885, decided September 6, 2001, we said:

It was error for the hearing officer to stop the proceeding with the intention of sending it back to a BRC. See Texas Workers' Compensation Commission Appeal No. 990831, decided June 3, 1999, and Texas Workers' Compensation Commission Appeal No. 002281, decided November 8, 2000. In Appeal No. 002281, we said:

In cases where a prerequisite to holding a CCH is a BRC, the Appeals Panel has previously held that a hearing officer has no authority under the 1989 Act to "remand" a case to a BRC after issues have been set forth in a [benefit review officer] report and the case has been convened for a CCH. [Appeal No. 990831, *supra*.] See also Texas Workers' Compensation Commission Appeal No. 94416, decided May 24, 1994, in which the Appeals Panel pointed out that there is no statutory authority for a hearing officer to "remand," noting that once a dispute goes to a CCH, the dispute should be resolved at that stage of dispute resolution.

While a hearing officer may continue a case, or hold the record open for a specific purpose, the hearing officer does not have the authority to remand a case for development of the evidence.

We reverse Conclusion of Law No. 7 and render a decision that the claimant is not entitled to SIBs for the third quarter. We reverse the portions of the decision and order

paragraphs which relate to the third quarter and render a decision that the claimant is not entitled to SIBs for the third quarter and order that the carrier is not liable for SIBs for the third quarter.

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

**CORPORATION SERVICES COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge