

APPEAL NO. 013119  
FILED FEBRUARY 13, 2002

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 November 27, 2001. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth compensable quarter. The appellant (carrier) appeals this determination on sufficiency grounds. The appeal file contains no response from the claimant.

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will only consider the evidence admitted at the CCH. 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 a 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). We do not find that to be the case with the documents attached to the carrier's request for review. Consequently, the documents will not be considered on appeal.

At issue in this case is whether the hearing officer erred in determining that the claimant is entitled to SIBs based on the finding that she made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period corresponding to the sixth quarter. The matters complained of by the carrier concern credibility and fact issues, which were for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. We have reviewed the complained-of determinations and we conclude that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing are affirmed.

The true corporate name of the carrier is **ACE USA/OR** and the name and address of its registered agent for service of process is

**MARCUS MERRITT  
CLAIMS VICE PRESIDENT  
ACE USA  
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200  
IRVING, TEXAS 75063.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Michael B. McShane  
Appeals Judge