

APPEAL NO. 020318
FILED MARCH 26, 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 was held on January 10, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals the determination on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to first quarter SIBs. At issue is whether the claimant made a good faith effort to seek employment commensurate with her ability to work and whether her underemployment was a direct result of the impairment for the compensable injury. These were questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986).

The claimant attached new evidence to her appeal, which would purportedly show that she is entitled to first quarter SIBs. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. 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). Upon our review, the evidence offered is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge