

APPEAL NO. 020672  
FILED APRIL 25, 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 February 14, 2002. The appellant (carrier) has appealed, claiming that the hearing officer erred in excluding evidence and in her determination that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 15th quarter based on an inability to work. The claimant responded, urging that the hearing officer's determination be affirmed.

DECISION

Affirmed.

The carrier appeals the hearing officer's decision to exclude evidence of a Decision and Order from a previous quarter. To obtain reversal of a judgment based on the hearing officer's abuse of discretion<sup>1</sup> 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 document because each compensable quarter stands alone and the determinations in one quarter are not necessarily binding on subsequent quarters (Texas Workers' Compensation Commission Appeal No. 951752, decided December 8, 1995).

Entitlement to SIBs is a question for the fact finder. 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 to the evidence. Section 410.165(a). It is for the hearing officer 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). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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<sup>1</sup> Though not appealed, we note that in review of the record, the carrier requested that "the rule be invoked" and the hearing officer excluded the claimant's spouse from the proceedings. The claimant's attorney objected to the spouse being excluded. Texas Rules of Evidence Rule 614 ("the rule") states in part:

[A]t the request of a party . . . the court shall order witnesses excluded. This rule does not authorize exclusion of: (1) a party who is a natural person or in civil cases *the spouse* of such natural person. (Emphasis added).

The hearing officer's determination to exclude the spouse was an abuse of discretion.

The hearing officer's decision and order are affirmed.

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

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

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Michael B. McShane  
Appeals Judge