

APPEAL NO. 021237  
FILED JUNE 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 April 17, 2002. On the sole issue, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 14th 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 14th quarter SIBs. At issue is whether the claimant's job search during the qualifying period constituted a good faith effort to find employment commensurate with his ability to work. This was a question 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 asserts error in the hearing officer's admission of Carrier's Exhibit No. 3, which consists of decisions and orders for 10th and 13th quarter SIBs. The claimant contends that the exhibit was not timely exchanged and is not relevant to these proceedings. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) provides that the parties shall exchange documentary evidence no later than 15 days after the benefit review conference. Section 410.161 of the 1989 Act provides that if a party fails to timely exchange documents without good cause, that party may not introduce the evidence. Upon our review of the record, it appears that Carrier's Exhibit No. 3 was not timely exchanged with the claimant. The hearing officer did not find good cause for admitting the exhibit. Therefore, the admission of Carrier's Exhibit No. 3 was error. However, to obtain a reversal based on such error the claimant must show that not only was the admission of the documents error but that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We do not find that to be so in this case.

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GEORGE MICHAEL JONES  
9330 LBJ FREEWAY, SUITE 1200  
DALLAS, TEXAS 75243.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Daniel R. Barry  
Appeals Judge