

APPEAL NO. 021566
FILED JULY 16, 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 May 9, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplements income benefits (SIBs) for the third and fourth quarters.

The claimant appealed, contending that her doctor had told her not to work, submitting for the first time on appeal medical records dated at various times in 1999, 2000, 2001, and one report dated in 2002 prior to the CCH, and submitting additional job search information/documentation. The respondent (carrier) responds urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) through either a total inability to work as set out in Rule 130.102(d)(4) or had conducted the necessary job search efforts required in Rules 130.102(d)(5) and 130.102(e). The hearing officer made no finding on the direct result requirement of Section 408.142(a)(2) nor has that omission been appealed. It is undisputed that the qualifying period for the third quarter was from July 31 through October 29, 2001, with the qualifying period for the fourth quarter being from October 30, 2001, through January 28, 2002.

On the claimant's initial Application for [SIBs] (TWCC-52) for the third quarter claimant listed no job contacts and proceeded only on a total inability to work theory. After a benefit review conference in December 2001, the claimant provided some documentation of about 18 job contacts during the third quarter qualifying period. The claimant submitted documentation for 20 job contacts for the fourth quarter qualifying period. The claimant testified that she had an ability to perform light duty work.

The hearing officer determined that the claimant "was not totally unable to perform any type of work in any capacity," thereby finding that the claimant did not meet the requirement of Rule 130.102(d)(4). The hearing officer commented that while she was "not persuaded by the fact that Carrier was unable to verify many of claimant's alleged job contacts" she was likewise "not persuaded that the claimant's activities . . . constitute a good faith search commensurate with her ability." We also note that listed among claimant's documentation of job searches is the note "10-20-01 married . . . gone until 11-01-01." (emphasis in the original.)

Regarding the documents submitted for the first time on appeal our review of those documents does not indicate that they constitute “newly discovered evidence” that would probably produce a different result on a new hearing (See Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ)) or that the hearing officer abused her discretion in the exclusion of certain documents based on lack of timely exchange. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer’s decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge