

APPEAL NO. 021838  
FILED AUGUST 28, 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 June 12, 2002. The hearing officer determined that the respondent (self-insured) is relieved of liability for supplemental income benefits (SIBs) for the second and third quarters; that the appellant (claimant) is not entitled to SIBs for the first through the fourth quarters; and that the claimant has permanently lost entitlement to SIBs. The claimant files an appeal alleging error and that she had ineffective assistance of counsel. The claimant's attorney also files an appeal. The self-insured responds to both appeals, urging affirmance.

#### DECISION

Affirmed.

The hearing officer stated that there was an "other record" which showed an ability to work in this case. Once there has been a determination that there is an "other record" showing an ability to work, it is incumbent on the claimant to document a job search, even in instances where there is a medical narrative<sup>1</sup> showing an inability to work. Whether an "other record" shows an ability to work is a fact determination made by the hearing officer, which we will not disturb absent a great weight and preponderance of the evidence against that determination. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the record in this case and do not agree that the determination of the hearing officer on this point is reversible.

On the issue of inadequacy of counsel, the Appeals Panel has held that, generally, we do not review the competency or tactics of a licensed attorney in a Texas Workers' Compensation Commission proceeding, (Texas Workers' Compensation Commission Appeal No. 941271, decided October 31, 1994), and "[a]s a general matter this appellate body does not normally review competency of a properly licensed attorney or that attorney's trial tactics." There are other forums for determining issues of that nature. Texas Workers' Compensation Commission Appeal No. 93929, decided November 30, 1993. In Texas Workers' Compensation Commission Appeal No. 94660 decided July 7, 1994, (Unpublished), the appellant contended, among other things, that his attorney did not adequately represent him and could have introduced additional evidence. The Appeals Panel, noting the agency relationship between the client and the attorney, indicated that such complaint was a matter between the appellant and his attorney, citing Texas Employers Insurance Ass'n v. Wermske, 162 Tex. 540, 349 S.W.2d 90 (1961), which stated that "an attorney employed to prosecute a claim for workmens' compensation is the agent of the client, and his action or nonaction within the scope of his employment or agency is attributable to the client." *Id* at 95. The

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<sup>1</sup> The hearing officer also determined that the claimant had supplied a medical narrative that was insufficient to show an inability to work for the SIBs qualifying periods because the medical narrative was conclusory in nature.

Appeals Panel further noted that "[u]nder these circumstances, this is a matter to be resolved between the claimant and his attorney. Texas Workers' Compensation Commission Appeal No. 94030, decided February 15, 1994."

Accordingly, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **A SELF-INSURED GOVERNMENTAL ENTITY** and the name and address of its registered agent for service of process is

**SA  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Roy L. Warren  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert E. Lang  
Appeals Panel  
Manager/Judge