

APPEAL NO. 022125
FILED SEPTEMBER 30, 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 July 16, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the sixth quarter. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

In her appeal, the claimant states that she disagrees with the impairment rating (IR) she stipulated to at the CCH, that the "Claimant had an IR of 15% or greater from the _____ injury." Section 410.166 provides that a written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(b) (Rule 147.4(b)).

The claimant included with her appeal documents that were not offered at the CCH, and, in addition, resubmitted other documents that were offered and admitted at the CCH. Documents submitted for the first time on appeal are generally not considered. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. 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). The claimant states in her appeal that she received the documents "the evening before the hearing." Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained in time for presentation at the hearing. The evidence submitted for the first time on appeal does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the sixth quarter. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The claimant contended that she had no ability to work during the qualifying period in dispute. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the

injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsections (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer to resolve. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is not 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, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATE SERVICES COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Veronica Lopez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge