APPEAL NO. 022146
FILED SEPTEMBER 20, 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 22, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th quarter. The claimant appealed, arguing that the hearing officer erred in determining SIBs and excluding an exhibit from the record. The respondent (self-insured) filed a response, urging affirmance.

DECISION

Affirmed.

The claimant included with his 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). 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 claimant asserts that the hearing officer erred in excluding, Claimant's Exhibit No. 6, a letter from his orthopedic surgeon, Dr. H, that explained how his injury caused a total inability to work. The claimant testified that after the benefit review conference was held on June 10, 2002, he requested a letter from Dr. H that explained how his injury caused a total inability to work. The claimant stated that he received a letter from Dr. H on June 31 or July 1, 2002, and that he faxed Dr. H's letter to the self-insured on July 10, 2002. The claimant stated that he could not explain the delay of over a week in exchanging the document, other than he intended to attach additional documents with the letter to send to the self-insured. The hearing officer was not persuaded that the claimant timely exchanged the document with the self-insured, and excluded the document from the record.

Our standard of review regarding the hearing officer's evidentiary matters is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain the reversal of a decision based on the hearing

officer's abuse of discretion in an evidentiary ruling, an appellant must show that the admission or exclusion of evidence was in fact an abuse of discretion, and also that such error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). Applying that standard, we find no abuse of discretion by the hearing officer in excluding the report of Dr. H dated June 28, 2002, because it was not timely exchanged.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. The parties stipulated that the applicable qualifying period was from December 15, 2001, through March 15, 2002. The claimant claimed that he had no ability to work during the qualifying period. 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. Although the hearing officer determined that there were no other records that showed that the claimant had some ability to work, he determined that the claimant was not entitled to SIBs for the 12th quarter because there was no narrative report from a doctor which specifically explained how the claimant's injury caused a total inability to work.

After review of the record before us and the complained-of determination, we have concluded that there is sufficient factual and legal 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODES).

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Veronica Lopez
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Susan M. Kelley
Appeals Judge