APPEAL NO. 022502
FILED NOVEMBER 8, 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 September 11, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 15th, 16th, and 17th quarters. The claimant appeals these determinations. The respondent (carrier) urges affirmance.

DECISION

We affirm.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we generally will not consider evidence that was not submitted into the record at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that case be remanded for further consideration, we consider whether it came to the 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). We do not find that to be the case with the report that the claimant filed as a supplement to his request for review. For this reason, and because the supplement was submitted after the deadline for filing an appeal, we decline to give it consideration.

The claimant argued that he was entitled to SIBs based on the theory that he had no ability to work at all during the qualifying periods in question. We have emphasized that a finding of "no ability to work" is a factual determination for the hearing officer. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer found that the claimant did not provide a narrative report from a doctor that specifically explained how the compensable injury caused a total inability to work. The hearing officer also determined that a functional capacity evaluation, which was performed during the qualifying period for the 15th compensable quarter, showed that the claimant had some ability to work. Based upon these findings, the hearing officer determined that the claimant did not satisfy the good faith requirement as provided for in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). Nothing in our review of the record indicates that the hearing officer's SIBs determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Margaret L. Turner
Appeals Judge