APPEAL NO. 023094
FILED JANUARY 13, 2003

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 November 12, 2002, with the record closing on November 14, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and third quarters. The claimant appeals and the respondent (carrier) responds, urging affirmance.

DECISION

The hearing officer's decision is affirmed.

The claimant attaches a medical report to her appeal that was not offered at the CCH. The document (from the claimant's treating doctor) attached to the claimant's request for review should have been requested by the claimant and exchanged with the carrier in a timely manner. It was through the lack of due diligence that it was not offered at the CCH; consequently, we refuse to consider it for the first time on appeal. *See* 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 Appeals Panel has repeatedly encouraged hearing officers to make specific findings of fact addressing each of the elements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). *See, e.g.,* Texas Workers' Compensation Commission Appeal No. 991973, decided October 25, 1999; and Texas Workers' Compensation Commission Appeal No. 001153, decided June 30, 2000. While the hearing officer did not make such specific findings, he did discuss the fact that the claimant failed to produce a narrative medical report which specifically explains how the injury causes the alleged total inability to work. It was undisputed that the claimant did not look for work during the relevant qualifying periods.

Applying our standard of review, as well as the requirements of the 1989 Act and the rule cited above, we find no error in the hearing officer's determination that the claimant was not entitled to SIBs for the first and third compensable quarters. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. 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 trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no

writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **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, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Roy L. Warren
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. The purpose of the requirement of a narrative was to have at least some explanation furnished to explain a conclusion as to why a worker could not work at any job. That has been done in this case. I am concerned with the prospect for inconsistency when, according to unarticulated standards, a narrative could be found not to be good enough in one part of the state, but fine in another part. Given the documentation of chronic pain throughout the treating doctor's statement and the impact on the claimant's life delineated therein, I'm not sure the doctor in this case was further required in his narrative to connect the obvious dots. I think the conclusion of the hearing officer that there is no narrative in this record, especially given the lack of any records showing an ability to work, is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust.

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Susan M. Kelley
Appeals Judge