APPEAL NO. 023190
FILED FEBRUARY 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 was held on October 21, 2002, with the record closing on November 12, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first, third, and fourth quarters; that the claimant is not entitled to SIBs for the second quarter; and that the appellant (carrier) is relieved of liability for first quarter SIBs from October 29, 2001, through January 27, 2002, second quarter SIBs from January 28 through April 28, 2002, and third quarter SIBs from April 29 through May 22, 2002, since the claimant failed to timely file her SIBs applications for these quarters. The carrier appealed the hearing officer's determination that the claimant is entitled to SIBs for the first, third, and fourth quarters. The file does not contain a response from the claimant. The hearing officer's determinations regarding the second quarter of SIBs and the carrier's relief from liability are unappealed and have become final. Section 410.169.

DECISION

Affirmed.

The carrier asserts that the hearing officer erred in admitting portions of Claimant's Exhibit Nos. 2, 3, and 4, and Claimant's Exhibit Nos. 5, 6, and 7. The carrier had objected on the grounds that the documents had not been timely exchanged. The carrier essentially argues that the claimant failed to prove that the complained-of documents were actually sent to the carrier. Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* 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). It was a factual issue for the hearing officer to determine whether or not the admitted documents were in fact timely exchanged. We do not find the hearing officer's ruling to be an abuse of

discretion, nor can we say that the hearing officer acted without reference to guiding rules and principles.

The hearing officer determined that the claimant is entitled to SIBs for the first quarter because she met her burden to show that she had a total inability to work during the relevant qualifying period. The carrier asserts that the claimant failed to provide a sufficient narrative report from a doctor, which specifically explained how the compensable injury caused a total inability to work, and there was an "other" record in the form of a functional capacity evaluation (FCE), which showed that she had some ability to work. Whether a claimant is entitled to SIBs based on having no ability to work is a factual determination for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The better practice is for a hearing officer to explain why records indicating that there is an ability to work are being discounted. The hearing officer did not explain why she did not find the FCE to be credible. However, the hearing officer could have read the FCE as stating that the claimant should not return to work before completing work hardening. Further, the hearing officer could consider that, even though the FCE indicated a physical ability to do sedentary work, it did not take into consideration the effects of the medications the claimant was taking. One of the reasons that the claimant's treating doctor gave for the claimant's inability to work was the effects of the medications. Even were we to find error, which we do not under the facts of this case, we note that the carrier was relieved of liability for the payment of first quarter SIBs in any case.

The hearing officer determined that the claimant is entitled to SIBs for the third and fourth quarters because she made a good faith effort to seek employment during the relevant qualifying periods. The carrier asserts that these determinations are against the great weight and preponderance of the evidence. Whether a claimant satisfied the good faith requirement for SIBs entitlement is a question of fact for the hearing officer to resolve. The hearing officer determined that the claimant did satisfy this requirement by showing that she made a good faith job search effort during the qualifying periods in question. As stated above, 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 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company 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 great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool

v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CENTRE INSURANCE COMPANY** 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.

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Daniel R. Barry
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Edward Vilano
Appeals Judge