

APPEAL NO. 023216  
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 November 8, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 16th quarter. The appellant (carrier) appealed, asserting evidentiary error by the hearing officer and also on sufficiency of the evidence grounds. The file does not contain a response from the claimant.

DECISION

Affirmed.

First, we address the carrier's evidentiary objections. The carrier asserts that the hearing officer erred in admitting a portion of Claimant's Exhibit No. 2 and the entirety of Claimant's Exhibit No. 7 because they were not timely exchanged. To obtain a reversal on the basis of admission or exclusion of evidence, it must be shown that the ruling admitting or excluding the evidence was error and that error was reasonably calculated to cause and probably did cause rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been stated that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We conclude that the carrier has not shown that the error, if any, in the admission of the claimant's evidence amounted to reversible error.

Among other requirements, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (d)(1) (Rule 130.102(d)(1)) 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 returned to work in a position which is relatively equal to the injured employee's ability to work. It is undisputed that the claimant was working during the qualifying period for the 16th quarter of SIBs. It is the carrier's assertion that the claimant should have been working full-time, and that he self-limited the amount of time he worked. Conflicting evidence was presented on the disputed issue. Whether or not the claimant's employment was relatively equal to his ability to work presented a question of fact for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's determination on this issue is so against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE 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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Chris Cowan  
Appeals Judge

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Edward Vilano  
Appeals Judge