

APPEAL NO. 030129
FILED MARCH 5, 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 December 16, 2002. With respect to the disputed issues before her, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the sixth and seventh compensable quarters. The claimant appeals the determinations on sufficiency of the evidence grounds. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

We first note that the claimant has attached some documents to his appeal. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* 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). It appears that one of the documents attached to the appeal (the November 20, 2001, correspondence from Dr. G) was not admitted into the record at the CCH. Upon our review, the evidence in the referenced document offered is not so material that it would likely produce a different result, nor is it shown that the document could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The qualifying period for the sixth quarter was from August 8 through November 2, 2001, with the sixth quarter running from November 16, 2001, through February 14, 2002, and the qualifying period for the seventh quarter was from November 3, 2001, through February 1, 2002, with the seventh quarter running from February 15 through May 16, 2002. The claimant contended that he believed he had no ability to work during the qualifying periods for the disputed quarters, and that no doctor released him to work. It is not contested that the claimant did not work or look for work during each week of the two qualifying periods. In addition, the parties do not dispute that the claimant had a compensable injury on _____, has been certified at maximum medical improvement with an impairment rating of 15% or greater, and has not commuted any portion of his income impairment benefits. The hearing officer found that the claimant's unemployment during the qualifying periods was a direct result of the compensable injury. The hearing officer resolved that although the claimant presented an adequate narrative from his treating doctor showing that he had no ability to work, also in evidence were "other records" showing that the claimant did have some ability to work. Therefore, the hearing officer

found that the claimant did not make a good faith effort to seek employment during either qualifying period.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the sixth and seventh quarters. Under the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was acting within her province as the fact finder in resolving the evidence in favor of the self-insured and nothing in our review of the record demonstrates that the hearing officer's determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true of the self-insured is and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
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DALLAS, TEXAS 75201.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge