

APPEAL NO. 030131  
FILED FEBRUARY 28, 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 13, 2002. With respect to the disputed issues before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th and 14th quarters. The appellant (carrier) appeals the determinations, and argues that there were medical records in evidence showing that the claimant had some ability to work. The claimant responds, arguing that the hearing officer applied the correct standard of proof and should be affirmed.

DECISION

Affirmed, as modified.

We first address an error as written in Finding of Fact No. 1G, and change that the 13th quarter was "from April 14, 2002 through November 12, 2002," to "from August 14, 2002, through November 12, 2002," as per the record. We also note that in Finding of Fact No. 8, the hearing officer incorrectly, given the sum of the remainder of her decision, wrote that the claimant "did not have a total inability to work," when she meant to write that the claimant "did have a total inability to work;" therefore, we change the Decision and Order to read the latter, in accordance with the balance of the hearing officer's determinations.

Next, we note that the claimant has attached some documents to his response to the carrier's 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 the documents attached to the response numbered 2, 6 (pp. 1-3), 7, 8, and 9 were not admitted into the record at the CCH. Upon our review, the evidence in the referenced documents offered is not so material that it would likely produce a different result, nor is it shown that the documents 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 13th quarter was from May 2 through July 31, 2002, with the 13th quarter running from August 14 through November 12, 2002, and the qualifying period for the 14th quarter was from August 1 through October 30, 2002, with the 14th quarter running from November 13, 2002, through February 11, 2003. The claimant contended that he had no ability to work during the qualifying periods for the disputed quarters. It is not contested that the claimant did not work or look for work during the 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 impairment.

The hearing officer did not err in determining that the claimant is entitled to SIBs for the 13th and 14th quarters. This case involves the interpretation and application of Section 408.151 and Rule 130.110, which we compared and discussed in Texas Workers' Compensation Commission Appeal No. 022604-s, decided November 25, 2002. In this case, the hearing officer decided that because the designated doctor's determination that the claimant was unable to work in any capacity should be given presumptive weight and was supported by the great weight of the other medical evidence (Rule 130.110), then the record or records to the contrary (purportedly showing that the claimant had some ability to work) do not require that the claimant be denied eligibility for 13th and 14th quarter SIBs (as would otherwise be true under Rule 130.102(d)(4)). In Appeal No. 022604-s, the Appeals Panel decided that since Rule 130.110 was promulgated after Rule 130.102(d)(4), then the procedures under Section 408.151 and Rule 130.110 control over the provisions of Rule 130.102 regarding entitlement to SIBs. Thus, as in this case, when the designated doctor is appointed "on or after the second anniversary of the injured employee's initial entitlement" to SIBs then the designated doctor's report is to be given presumptive weight "until proven otherwise by the great weight of the other medical evidence" or until the designated doctor "amends his/her report based on newly provided medical or physical evidence." We note here that the carrier raised the argument that it did not believe that the designated doctor wrote that the claimant had a total inability to work; however, looking at the same medical records, the hearing officer interpreted the designated doctor as having opined that the claimant was unable to work in any capacity.

The hearing officer determined that the claimant was entitled to SIBs for the 13th and 14th 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 claimant 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, as modified.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Terri Kay Oliver  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge