APPEAL NO. 030263
FILED MARCH 17, 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 January 2, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter. The claimant appeals and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Initially we address the claimant's contention that the hearing officer erred in excluding a document because it was 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 claimant has not shown that the error, if any, in the exclusion of the complained-of evidence amounted to reversible error.

With respect to whether the claimant is entitled to SIBs, 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 claimant contended that she has never been released to return to full-duty work, and that she has numerous restrictions and limitations that preclude her from employment. Nevertheless, she further contended that she was working with the Texas Rehabilitation Commission (TRC), and that she had made a good faith effort to find work commensurate with her ability to work.

The hearing officer specifically found that the claimant was not participating in a TRC-sponsored vocational rehabilitation program. There was no proof offered that the on-line college courses she was taking from her home were sponsored by TRC; and further, there was no proof of attendance during the qualifying period. The claimant conceded that she had last attended the courses prior to the beginning of the qualifying period. Under these circumstances, the claimant has failed to meet the requirements of Rule 130.102(d)(2) for SIBs entitlement. As to the claimant's assertion that she had no ability to work (Rule 130.102(d)(4)), implicitly the hearing officer found that the claimant had some ability to work, which is amply supported by the evidence of record, and precludes the claimant from establishing that she is entitled to fourth quarter SIBs because of an inability to work. We note also the lack of any narrative report from any

of the claimant's doctors that would explain how the compensable injury causes a total inability to work, and the existence of other records which show that the claimant has some ability to work. Lastly, the claimant argues that she made a good faith job search, in accordance with Rule 130.102(d)(5) and (e). The hearing officer specifically noted that the claimant failed to document weekly job searches, with no search activity documented during the first three weeks of the qualifying period. The above determinations are all supported by sufficient evidence.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

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Roy L. Warren
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Edward Vilano
Appeals Judge