

APPEAL NO. 030539
FILED APRIL 23, 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 February 4, 2003. The hearing officer decided that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the seventh quarter. The hearing officer based this decision on a number of factual findings, primarily his findings that the claimant had the ability to perform some work during the qualifying period for the seventh quarter and that the claimant had not in good faith attempted to obtain employment commensurate with his ability to work during this qualifying period. The claimant appeals, stating that he was able to do some work during the qualifying period, and that he did seek employment in good faith during the qualifying period. The claimant attaches a number of documents to his request for review, which he asks that we consider in reviewing the decision of the hearing officer. The respondent (carrier herein) replies that the claimant failed to timely file his request for review and that the hearing officer's decision is sufficiently supported by the evidence.

DECISION

Finding our jurisdiction has been invoked, sufficient evidence to support the decision of the hearing officer, and no reversible error in the record, we affirm the decision and order of the hearing officer.

We must first address the carrier's jurisdictional argument that the claimant's request for review was not timely filed. Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was mailed to the parties on February 6, 2003. The claimant does not state when he received the decision, but by operation of Tex W.C. Comm'n, 28 TEX. ADMIN CODE § 102.5(d) (Rule 102.5(d)), as amended effective August 29, 1999, unless the great weight of evidence indicates otherwise, he was deemed to have received the hearing officer's decision five days after it was mailed, or by February 11, 2003. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days, excluding Saturdays, Sundays, and holidays listed in Section 662.033 of the Texas Government Code, of the date of receipt of the hearing officer's decision. Therefore, the deadline for the claimant to file or mail an appeal was March 5, 2003. As the appeal was postmarked as mailed to the Commission on February 27, 2003, and received by the Commission on March 3, 2003, it was clearly timely filed.

We note that we will not generally consider evidence not submitted into the record, and offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not

offered at the hearing, and whether it is so material that it would probably produce a different result. 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). The evidence attached to the claimant's request for review does not meet this standard, and we, therefore, cannot consider it.

Section 408.142(a)(4) states that one requirement for SIBs eligibility is that the claimant attempt in good faith to obtain employment commensurate with the claimant's ability to work. Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. 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). As an appellate tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Applying the standard of review stated above, we find no legal basis to overturn 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 **LIBERTY MUTUAL FIRE 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.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge