

APPEAL NO. 030774  
FILED MAY 15, 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 March 4, 2003. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter. In her appeal, the claimant argues that the hearing officer's determinations that she had some ability to work in the relevant qualifying period and that she is not entitled to SIBs for the third quarter are against the great weight of the evidence. The appeal file does not contain a response to the claimant's appeal from the respondent (carrier).

DECISION

Affirmed.

Initially, we consider the evidence attached to the claimant's appeal, which was not admitted in evidence at the hearing, namely, the December 13, 2002, letter from Ms. W, the vocational case manager; a January 29, 2003, report from the pain management program; the second page of a November 8, 2002, report from Dr. S; a January 20, 2003, letter from Dr. E, the claimant's knee surgeon; and a March 28, 2003, letter from Dr. M, the claimant's treating doctor. 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). Only the letter from Dr. M was not in existence at the time of the hearing and, although that report was created after the date of the hearing, we cannot agree that the evidence meets the requirements of newly discovered evidence in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing. Indeed, it is the functional equivalent of three other letters/reports from Dr. M that were admitted in evidence. None of the documents attached to the appeal meet the standard for newly discovered evidence and, as such, they will not be considered on appeal.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that she was assigned an impairment rating of 15% or greater; that she did not commute her impairment income benefits; that the third quarter of SIBs ran from December 6, 2002, to March 6, 2003, with a corresponding qualifying period of August 24 to November 22, 2002; and that the claimant had no earnings and did not make any job searches in the qualifying period. As noted above, the hearing officer determined that the claimant is not entitled to SIBs for the third quarter because she did not satisfy the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)).

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement in the qualifying period for the third quarter of SIBs by demonstrating that she had no ability to work in that period. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4); thus, she further determined that the claimant did not prove that she had no ability to work during the qualifying period for the third quarter. Nothing in our review of the record reveals that the challenged determination is so against the great weight as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the good faith determination, or the determination that the claimant is not entitled to SIBs for the third quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**LEO MALO  
ZURICH NORTH AMERICA  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Edward Vilano  
Appeals Judge