

APPEAL NO. 031194
FILED JUNE 12, 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 April 9, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appealed on sufficiency of the evidence grounds and asserts that the hearing officer erred in admitting Respondent's (carrier) Exhibit No. 6. The carrier urges affirmance.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer erred in admitting Carrier's Exhibit No. 6. Section 410.160 provides that the parties shall exchange all medical reports, expert witness reports, medical records, and witness statements within the time prescribed by Texas Workers' Compensation Commission rule. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) provides that the parties shall exchange documents intended to be offered into evidence no later than 15 days after the benefit review conference. A party who fails to disclose such information or documents at the time disclosure is required may not introduce the evidence unless good cause is shown for not having timely disclosed the information or documents. (Section 410.161). The record indicates that Carrier's Exhibit No. 6 was not exchanged within the prescribed period. Furthermore, the hearing officer determined, at the hearing below, that carrier exercised a "lack of due diligence" in producing the document. The hearing officer, nonetheless, admitted the exhibit "to rebut the [claimant's] testimony" on entitlement to second quarter SIBs. We have said that there is no blanket exception to Rule 142.13(c) for rebuttal evidence. See Texas Workers' Compensation Commission Appeal No. 972029, decided November 19, 1997; Texas Workers' Compensation Commission Appeal No. 992384, decided December 13, 1999. Accordingly, the hearing officer erred in admitting the exhibit. Notwithstanding, our review of the record indicates that Carrier's Exhibit No. 6 was not a basis of the hearing officer's determination. The admission of Carrier's Exhibit No. 6, therefore, does not constitute reversible error. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer did not err in determining that the claimant is not entitled to second quarter SIBs. Section 408.142 and Rule 130.102 establish the requirements for entitlement to SIBs. At issue is whether the claimant "satisfactorily participated" in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC), during the qualifying period. 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 Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the

claimant's testimony and the admissible evidence, the hearing officer could find that the claimant did not satisfactorily participate in a full-time TRC program during the qualifying period. The hearing officer's determination is not 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).

The decision and order of the hearing officer are affirmed.

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

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

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge