

APPEAL NO. 031288
FILED JULY 10, 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 28, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance. Attached to the claimant's appeal were numerous documents, which were not offered or admitted into evidence at the hearing.

DECISION

We affirm.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we generally will not consider evidence that is submitted 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 the 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). We do not find that to be the case with the documentation attached to the claimant's request for review. All of the documents attached were in existence before the hearing on this matter, and the claimant offers no explanation as to why they were not offered into evidence at the hearing. For this reason, we decline to give consideration to any documentation which was not submitted into evidence at the hearing.

The claimant argued that she was entitled to SIBs based on the theory that she had no ability to work at all during the qualifying period in question. We have emphasized that a finding of "no ability to work" is a factual determination for the hearing officer. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer found that the claimant did not provide a narrative report from a doctor that specifically explained how the compensable injury caused a total inability to work. The hearing officer further specifically found that during the relevant time period the claimant did have some ability to work. Based upon these findings, the hearing officer determined that the claimant did not satisfy the good faith requirement as provided for in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule

130.102(d)(4)). Nothing in our review of the record indicates that the hearing officer's SIBs determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231-4813.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge