

APPEAL NO. 031422  
FILED JULY 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 (CCH) was held on August 6, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appealed, disputing the determination on various grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

We first address the claimant's evidentiary objection. The claimant asserts that the hearing officer erred in failing to admit an audiotaped conversation, which he offered into evidence. The hearing officer determined that the audiotape was not timely exchanged, and that no good cause existed for the untimely exchange. 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 the 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 hearing officer properly excluded the complained-of audiotape on the grounds of no timely exchange and no good cause shown.

The hearing officer found that on \_\_\_\_\_, the claimant's residence was not located within seventy-five miles of the (city) local office of the Texas Workers' Compensation Commission. Additionally, the hearing officer concluded that good cause existed to conduct the CCH in the (city) local office. The claimant appealed the finding that his residence was not located within seventy-five miles of the (city) local office contending he only resides fifty-two miles away but did not dispute the conclusion that there was good cause. It appears to us that the claimant's residence is less than seventy-five miles of the (city) local office. However, the error, if any, does not constitute reversible error because in either event the hearing officer retained jurisdiction to hear this matter.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rules 130.102(d)(2), and the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1). It was undisputed that

the claimant sustained a compensable injury on \_\_\_\_\_; that he reached maximum medical improvement with an impairment rating of 15% or greater; and that the qualifying period for the first quarter was February 7 through May 8, 2002. The claimant based his request for entitlement to SIBs for the first quarter on the assertion that during the qualifying period he was enrolled as a full-time student at a university. It was undisputed that the claimant did not work during the qualifying period and did not look for working during that time. The claimant testified that he underwent a functional capacity examination which found that he could work at a medium-duty level.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. The claimant testified that he lived in (state) and that he contacted the corresponding (state) agency. The hearing officer specifically found that the claimant was not enrolled in, and satisfactorily participating in a full time vocational rehabilitation program sponsored by the TRC or by the (state) (agency). Correspondence from the (state) (agency) in evidence reflected that the claimant was on a deferred services waiting list. The evidence sufficiently supports the hearing officer's determination that during the qualifying period for the first quarter of SIBs, the claimant was not participating in any TRC-sponsored vocation rehabilitation program or full-time vocational rehabilitation program sponsored by the (state) (agency). The hearing officer noted in her statement of the evidence that the mere approval of educational plans, without more, does not constitute a sponsorship of a program.

The hearing officer also made a challenged finding of fact that the claimant's unemployment was not a direct result of his impairment during the qualifying period for the first quarter. In her statement of the evidence, the hearing officer notes that "[the] claimant testified that he planned to return to work for employer, and decided to resume his studies only after learning that his employment with the employer had been terminated." The hearing officer's determination on this matter is not so against the great weight and preponderance of the evidence as to mandate a reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the decision and order of the hearing officer

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

**C. J. FIELDS  
5910 NORTH CENTRAL EXPRESSWAY  
DALLAS, TEXAS 75206.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Edward Vilano  
Appeals Judge