

APPEAL NO. 033238
FILED FEBRUARY 5, 2004

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 November 5, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. The claimant appeals this determination on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant attached additional documentation to his appeal, some of which was not previously admitted, to show that he is entitled to sixth quarter SIBs. 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). Upon our review, it has not been shown that the documents could not have been obtained prior to the hearing below, nor is the additional documentation so material that it would probably produce a different result. The additional documentation, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The claimant appears to argue that the hearing officer erred by admitting Carrier's Exhibit Nos. 5 and 6, asserting that he had not received these exhibits prior to the hearing below. The carrier represented that it exchanged the exhibits by certified mail on September 29, 2003; the claimant was given notice of the package on October 2 and October 4, 2003; the claimant did not pick up the exchange package; and the package was returned to the carrier. The hearing officer examined the package on the record and determined that it was sent to the claimant's correct address and included Carrier's Exhibit Nos. 5 and 6. Although the exchange was not timely in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)), the hearing officer found good cause to admit the exhibits because they were not available until September 23, 2003, and were exchanged as soon as practicable. We cannot conclude that the hearing officer abused her discretion in admitting Carrier's Exhibit Nos. 5 and 6. Morrow v. H.E.B. Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in determining that the claimant is not entitled to sixth quarter SIBs. Section 408.142 and Rule 130.102 establish the requirements for entitlement to SIBs. At issue was whether the claimant made a good faith job search commensurate with his ability to work 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 Ins.

Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer could disbelieve the claimant's evidence, as she did, and find that the claimant did not make a good faith job search. In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986).

The claimant requests reversal of the hearing officer's decision for the development and presentation of additional evidence on his behalf, i.e., to cross-examine the carrier's private investigator regarding Carrier's Exhibit Nos. 5 and 6. Our review of the record reveals that the claimant was given ample opportunity to meet his burden of proof on the disputed issue. Accordingly, we decline to grant the claimant's request.

The claimant also requests reversal on the basis that the hearing officer demonstrated bias in reaching her decision. We find no support in the record for the claimant's contention that the hearing officer was motivated by or in any way demonstrated bias in favor of the carrier. The fact that the hearing officer issued a decision adverse to the claimant does not, in our view, demonstrate bias but is the prerogative of the hearing officer as the sole judge of the weight and credibility of the evidence. Accordingly, we will not reverse the hearing officer's decision.

The decision and order of the hearing officer are affirmed.

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

RUSS LARSEN
860 AIRPORT FREEWAY WEST, SUITE 500
HURST, TEXAS 75054-3286.

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge