

APPEAL NO. 033307
FILED FEBRUARY 17, 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 (CCH) was held on November 21, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 9th, 10th, or 11th quarters. The claimant appeals the hearing officer's decision. The appeal file contains no response from the respondent (carrier).

DECISION

Affirmed.

The claimant attached several documents to his appeal, which were not offered into evidence at the hearing. In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that was not submitted into the record at the hearing and raised 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 documents attached to the claimant's appeal, which were not admitted into evidence at the hearing. Consequently, we decline to consider this evidence on appeal.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his or her ability to work. At issue in this case is whether the claimant satisfied the good faith requirement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), relied on by the claimant for SIBs entitlement, states that the "good faith" criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

Alternatively, Rule 130.102(d)(5), which the claimant also relied on for SIBs entitlement, provides that the good faith requirement may be satisfied if the claimant "has provided

sufficient documentation as described in subsection (e).” Rule 130.102(e) states that “an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.” The rule then lists information to be considered in determining whether the injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which document the job search, the amount of time spent in attempting to find employment, and any job search plan.

Whether the claimant satisfied the good faith requirement for SIBs entitlement was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The hearing officer explained in her decision that the claimant failed to provide a narrative complying with the requirements of Rule 130.102(d)(4) and that he failed to document a job search during each week of the qualifying periods in question. The hearing officer concluded that the claimant was not entitled to SIBs for the 9th, 10th, and 11th quarters. Nothing in our review of the record indicates that the hearing officer’s decision 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 asserts on appeal that his criminal record should not have been considered by the hearing officer. We would point out that the claimant did not object to the admission of Carrier’s Exhibit No. 3, containing the claimant’s criminal history, and that it is well-settled that the credibility of a claimant, as an interested party, is always in issue at a CCH. Texas Workers’ Compensation Commission Appeal No. 931004, decided December 14, 1993. The hearing officer was at liberty to give whatever weight she deemed appropriate to the evidence regarding the claimant’s criminal record. See Texas Workers’ Compensation Commission Appeal No. 92699, decided February 8, 1993.

The decision and order of the hearing officer are affirmed.

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

**UNITED STATES CORPORATION COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge