

APPEAL NO. 040365
FILED APRIL 7, 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 January 16, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appeals this determination on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant requests consideration of documents not offered at the hearing below. Documents offered 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). We note that the additional documents were not attached to the claimant's appeal and are not a part of the record in this case. Based upon the claimant's representations, the additional documents do not constitute newly discovered evidence and will not be considered.

The hearing officer did not err in determining that the claimant is not entitled to third quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue was whether the claimant's unemployment was a direct result of the impairment from the compensable injury; whether the claimant made a good faith job search commensurate with her ability to work; and whether she was enrolled in, and 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). The hearing officer considered the evidence and found that the claimant's unemployment was not a direct result of the impairment from the compensable injury; the claimant failed to document a job search each week of the qualifying period; and the claimant was not enrolled nor did she satisfactorily participate in a full-time vocational rehabilitation program sponsored by the TRC. In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination that the claimant is not entitled to third quarter SIBs 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 appears to complain of ineffective assistance from her ombudsman, with regard to the presentation of evidence in support of her claim. We have said that an ombudsman is not a legal representative, that the ombudsman is at the CCH to assist the claimant, and that the presentation of the case remains the responsibility of the claimant. See Texas Workers' Compensation Commission Appeal No. 001766, decided October 2, 2000. Additionally, we note that the claimant did not raise this matter at the hearing below. Accordingly, we will not reverse the hearing officer's decision on this basis.

Finally, the claimant asserts that the hearing officer's decision is arbitrary with regard to the "good faith" determination. We find no support in the record for the claimant's assertion. The fact that the hearing officer issued a decision adverse to the claimant is not, in itself, arbitrary but is the prerogative of the hearing officer, as sole judge of the weight and credibility of the evidence. Accordingly, we find no basis to 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 **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge