

APPEAL NO. 980034

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 April 9, 1997 with (hearing officer 1), with a second hearing officer, reopening and closing the record on December 10, 1997, and writing the decision. On the single issue in dispute, the (hearing officer 1) determined that the respondent (claimant) was entitled to supplemental income benefits for the eleventh compensable quarter. The appellant (carrier) appeals findings of fact and conclusions of law that the claimant was not able to work and therefore no search for work was a good faith search commensurate with his abilities and that he was entitled to SIBS for the eleventh quarter. No response has been filed.

DECISION

Affirmed.

The single issue in this case is entitlement to SIBS for the eleventh quarter, the filing or qualifying period for which ran from September 18, 1996, to December 16, 1996. The claimant sustained a back injury on _____, subsequently had back surgery, and was found to be at maximum medical improvement on July 19, 1993, with a 16% impairment rating. He ultimately returned to some employment under restriction and on June 12, 1996, he had surgery, according to the operative report, to re-do decompressive laminectomy at L3 to S1, exploration and fusion at L4-5 and L5-S1, repair of meningocele, fat graft and removal of hardware from the earlier surgery. According to the claimant, he was instructed by his surgeon not to work for 6 months while recuperating. The claimant also testified that after the June 12, 1996 surgery, he was weak and really had to learn to walk again and that he had to "build" or recovery a minimum of six months. He also indicated he could not work because of his neck. There are several medical reports from his surgeon during the period following his June 12, 1996, surgery that perfunctorily state the claimant is "not able to work at this time." However, while a couple of these reports mention "low back pain," the reports during the filing period seem to be more concerned with a cervical disc problem which is apparently in dispute as to compensability. An Independent Medical Examination (IME) report in March 1997 describes the surgeries, and states that the claimant reports that his neck and back pain are of equal intensity and extend into all four extremities. The impression listed was of Lumbar disc syndrome, status post 360E fusion and cervical spondylosis. At the time of that report dated March 3, 1997, the opinion was expressed that the claimant is capable of performing "some work."

While the medical evidence here regarding physical capabilities and time frames and causes leaves much to be desired, we are not willing to conclude the hearing officer did not have some basis to infer that the claimant was not able to work during the filing period in

issue. Clearly, we have held that, as a general rule, medical evidence is necessary to establish no ability to work at all. Texas Workers' Compensation Commission Appeal No. 950173, decided March 17, 1995. We adhere to that holding; however, we find it to be minimally satisfied here where there is an operative report showing the surgery on June 12, 1996, preceeding the filing period which started on September 18th. That detailed report together with the subesequent abreviated reports from the surgeon and the later IME medical report plus the testimony of the claimant provided a foundation for the findings and conclusions that we are unwilling to conclude are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer could consider and believe the claimant's testimony on the issue regarding his condition and recuperative needs following the surgery as instructed by his surgeon. The weight and credibility to be given the testimony of any witness including that of the claimant was for the hearing officer to determine. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ); Section 410.165(a).

Finding no reversible error, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge