APPEAL NO. 980045

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 9, 1997, a contested case hearing (CCH) was held. He (hearing officer) determined that appellant (claimant) did not sustain her burden to show that her compensable low back and knee injury extended to include her cervical spine and that she is not entitled to supplemental income benefits (SIBS) for the third quarter. Claimant appeals, asserting that the hearing officer erred and denied her due process and equal protection in requiring her to prove her cervical injury, that she did prove a cervical injury, and that the hearing officer's SIBS and extent of injury determinations are against the great weight and preponderance of the evidence. Respondent (carrier) replies that we should affirm the decision and order.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that her compensable injury did not extend to her neck. She asserts that she complained of cervical pain in 1994, that her failure to complain of cervical pain thereafter may have been due to the fact that her use of a morphine pump "masked" the cervical pain, and that even if her cervical symptoms were delayed, that does not mean her cervical injury is not compensable. The claimant in a workers' compensation case has the burden to prove that he or she sustained a compensable injury and the extent of the injury. Texas Workers' Compensation Commission Appeal No. 960924, decided June 26, 1996. The 1989 Act defines "injury" as damage or harm to the physical structure of the body and as disease naturally resulting from the damage or harm. Section 401.011(26). A claimant may meet his or her burden to establish an injury through the claimant's own testimony if the hearing officer finds the testimony credible. *See* Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not 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, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant's medical records indicate that she slipped and fell at work on _____, landing on her right knee and injuring that knee, her low back, a finger, her wrist, and her elbow. It is undisputed that claimant sustained a compensable injury to her low back and right knee. Claimant eventually underwent lumbar disc excision and fusion surgery in

January 1997 and also had an implanted morphine pump from September 1995 to May 1996, when it was removed. Claimant testified that she told her doctors beginning a week after her _____, injury that she was having aches and pains in her neck as well as her low back. She also said she did not "consider it" to be her neck, but that it was pain in her "shoulders and down [her] neck." She said she had pain across her shoulders that went up into her neck and caused headaches. Although the majority of the medical records do not mention neck pain, there is some medical evidence that claimant complained of neck pain after her 1994 injury. However, there was evidence that claimant underwent breast reduction surgery in September 1994 to relieve shoulder and "upper thorax" pain.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant sustained a neck injury in addition to her low back and right knee injury on _____, and resolved this issue against claimant. Claimant points to evidence showing that she was complaining of cervical pain in 1994 and emphasizes medical evidence in her favor. However, the hearing officer was the sole judge of the credibility of the evidence in this case, including the medical evidence. He decided what weight to give the evidence and determined causation and other factors based on the evidence before him. We will not substitute our judgment for his because his extent-of-injury determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Given our standard of review, we will not overturn the hearing officer's decision. *Id*.

Claimant contends that the hearing officer erred in requiring claimant to prove that her injury extends to her cervical spine. Citing the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), she asserts that her injury is to her spine, which is to be considered a "unit of the whole person for purposes of impairment evaluation." She asserts that once she proved a low back injury, she proved an injury to the entire spine as a unit. However, this case does not involve claimant's impairment rating (IR). We perceive no error, denial of due process, or denial of equal protection in requiring claimant to prove the extent of her injury in this case.

Claimant contends the hearing officer erred in determining that she did not meet the good faith SIBS requirement and in denying SIBS for the third quarter. Claimant asserts that: (1) (Dr. WA) was not credible in stating that she could work because Dr. WA did not perform an adequate exam; (2) her functional capacity evaluation (FCE) indicated that she could work only up to four hours per day with "probable difficulty with two hours or more"; and (3) even though she could not work, she acted in good faith in seeking work with six employers.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the impairment income benefits (IIBS) period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly

wage (AWW) as a direct result of the impairment; (3) not elected to commute a portion of the IIBS; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. Good faith is a subjective notion and generally means honesty of purpose, freedom from intent to defraud and being faithful to one's obligations. Texas Workers' Compensation Commission Appeal No. 941293, decided November 8, 1994. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

Claimants seeking SIBS need not always search for employment in order to meet the "good faith" requirement. Where the claimant proves that he has no ability at all to work, the claimant still complies with the "good faith" requirement even though he does not look for work. Texas Workers' Compensation Commission Appeal No. 950582, decided May 25, 1995. The claimant has the burden to prove he has no ability to work because of the compensable injury. Appeal No. 950582. When a claimant alleges a total inability to do any work, generally, that contention must be supported by medical evidence. Texas Workers' Compensation Commission Appeal No. 941439, decided December 9, 1994.

The parties stipulated that: (1) claimant sustained a compensable injury to her low back and knee on _____; (2) claimant's IR was 19%; (3) claimant did not elect to commute her IIBS; and (4) the filing period for the third quarter was from August 15, 1997, to November 15, 1997.

Claimant testified that, in addition to the three potential employers listed on her Statement of Employment Status (TWCC-52), she applied for work with three employers who had “bona fide ads” in the newspaper. She said that some of the places she applied included Eckerd’s Drug, American Income, National Car Rental, the city employment office, and Plantation Foods, but that she has not been hired. She testified that during the filing period, she spent a total of about 10 to 12 hours looking for work, not counting travel time. Claimant said she has not contacted any temporary employment agencies and said that she is homebound for the most part. Claimant testified that she felt she was a good candidate for a job except that she cannot sit or stand very long. Claimant also said she does not think she has any work ability. She said her doctor told her she could not work during the filing period. Claimant said she began to seek work after the October 30, 1997, benefit review conference (BRC) because she was told that her doctor’s opinion had “no weight” and she felt that in order to get her benefits she was going to have to “play the game.” Claimant indicated that, during the filing period, she sought work on three days and also indicated that she did not begin looking until November 7, 1997, during the last month of the filing period. Claimant said she can drive and that she can type 63 words per minute.

In a July 30, 1997, letter, (Dr. SH) stated that claimant cannot work secondary to pain. In an October 10, 1997, letter, Dr. SH said it is very difficult for claimant to work due

to substantial pain. Claimant agreed that there is medical evidence from other doctors that she has the ability to do part-time, light-duty work.

In this case, our review of the record does not indicate that the hearing officer's good faith and SIBS determinations regarding the third quarter are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.* Therefore, there is no basis for disturbing his decision on appeal. The hearing officer heard claimant's testimony about her ability to work and her job search efforts. The fact that the evidence could have allowed different inferences under the state of the evidence does not provide a sufficient basis for reversing the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992.

Claimant complains that the hearing officer misstated the evidence in the decision and order when he stated that claimant said she "could play the game to get benefits." Claimant asserts that when she said that, she meant only that, because her doctor's opinion was disregarded, she felt like "in order to get [her] benefits, then [she] was going to have to–you know, . . . play the game." Claimant complains that she has been portrayed as a "liar and a cheat." She asserts that she believes a "game" was involved because she did not know if she could certify that she could work and because if she told potential employers that she had rods in her spine, "no employer in [its] right mind would have hired her." Even if the hearing officer misstated claimant's exact words, as the sole judge of her credibility and the weight to give to her testimony he was free to interpret her meaning. He considered this evidence along with the other evidence in the record and determined what facts the evidence established. We perceive no reversible error.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge