APPEAL NO. 980087

Following a contested case hearing held, on December 10, 1997, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 12th compensable quarter because she had the ability to perform sedentary work during the filing period but made no attempt to find employment of any type, and that she lost entitlement to SIBS from August 16 through September 2, 1997, because she did not timely file her Statement of Employment Status (TWCC-52). Claimant has filed an appeal challenging the stipulation that her impairment rating (IR) is 16% and two findings of fact relating to her entitlement to SIBS. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The parties stipulated that claimant's IR is 16%, that she did not "elect to commute" any portion of her impairment income benefits, and that the 12th compensable quarter began on August 16 and continued through November 14, 1997.

The hearing officer stated that the filing period was the 90-day period preceding August 16, 1997.

At the outset of the hearing, the hearing officer proposed certain stipulations of fact including a stipulation that claimant's IR is 16% and both the carrier's representative and claimant's assistant stated their agreement. The hearing officer then asked claimant if she agreed with that stipulation and she responded, "yes sir." Accordingly, we see no merit in claimant's challenge to that IR on appeal, which states that her treating physician assigned a 26% IR.

Claimant testified that on or about _____, while working as a "zoner" for (employer), she was injured when a stocker threw a box of bicycle chains, which hit her right shoulder and almost knocked her down. She said that following her injury, she saw numerous doctors; that her current treating doctor, (Dr. V), discovered a herniated cervical disc with an MRI; that she has not had surgery for the injury; that it is not her understanding that she has been released by Dr. V to return to work; and that she did not look for work during the filing period. Claimant further stated that during the filing period, she did some driving and lived alone, preparing her own meals, and attending to her household tasks. She also indicated that she had not sought retraining or further education, had no counselor at the Texas Rehabilitation Commission, and was not registered with the Texas Workforce Commission. She argued to the hearing officer that she had no ability to work, as evidenced by Dr. V's off-work slip dated February 11, 1997.

Dr. V's slip of "2/11/97" states that claimant "cannot work at this time due to cervical disk herniation." In his narrative report of that date, however, Dr. V stated that claimant "has permanent restrictions" and he repeated that he added to these restrictions that she should not stand at work for more than two hours at a time. In his March 19, 1997, report, Dr. V stated that he assigned claimant a 26% IR on July 9, 1996, and, also then stated, that she could only work at a sedentary level with no lifting greater than 10 pounds, no overhead work, no exposure to vibration, and no repetitive bending. Dr. V's July 8, 1996, report stated that an MRI revealed cervical disc disease and that claimant underwent a capacity evaluation which indicated she was able to work on a sedentary level with lifting only nine pounds 28 inches to the waist and that she has difficulty climbing stairs but was able to do simple grasping, pushing and pulling, and fine manipulation. Dr. V recommended that claimant return to work at a sedentary level with no lifting greater than 10 pounds, no overhead work, no exposure to vibration, and no repetitive bending. Dr. V's reports reflect that he saw claimant again on October 25, 1996, at which time he recommended an elevated stool at her work site; that on January 28, 1997, he added a restriction that she stand no longer than two hours at a time at work; that she returned on March 19, 1997, stating that the employer was unable to provide these restrictions and that she has not returned to work; and that, in his opinion, her physical exam has not changed over the last three months. Dr. V concluded that claimant should continue with home therapy and return on an "as needed basis." On April 1, 1997, Dr. V reported that claimant, then 65 years of age, is still having fairly severe pain, is not considered a surgical candidate, and has fairly stringent job restrictions. On June 30, 1997, Dr. V reported that claimant continued to complain of constant pain but was in no acute distress, that she has decreased S1 reflexes but no neurological deficits, and that she should continue with the restrictions he gave her.

Claimant appeals findings that on February 11, 1997, Dr. V recommended that claimant stand no longer than two hours at a time and added that to her permanent restrictions, and that during the filing period she had the ability to perform sedentary type work but did not attempt to find employment of any type.

We are satisfied that neither of these challenged findings, nor the conclusion that claimant is not entitled to SIBS for the 12th compensable quarter, are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Claimant's testimony and answers to the carrier=s interrogatories, and Dr. V's reports, sufficiently support the challenged findings and conclusion.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge