APPEAL NO. 980148
FILED MARCH 4, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 18, 1997, a hearing was held. [The hearing officer] determined that appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the sixth, seventh, and eighth compensable quarters. Claimant asserts that he has total disability and that if he were capable of some work, he had "no realistic chance" to be hired; claimant cites his treating doctor's (Dr. B) opinions and criticizes a functional capacity evaluation (FCE). The respondent (carrier) replies that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, the date of his injury. At that time claimant was injured when a horse he was riding fell. His injuries were stated as including his back, neck, shoulder, hip and leg. The parties stipulated that claimant's impairment rating is 22%, that no benefits were commuted, that the sixth compensable quarter began on May 27, 1997, the seventh began on August 26, 1997, the eighth began on November 25, 1997, and claimant sought no work during the filing period for any of the three quarters in issue. The record indicates that while the sixth and seventh quarters were reported by the benefit review conference report as in issue, the parties agreed at the hearing to add the eighth quarter to also be considered.

The condition and activity of the claimant during the filing period (approximately 90 days preceding the beginning of each quarter) are examined under the 1989 Act to determine whether SIBS are payable for the applicable quarter. *See* Section 408.143 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)).

Claimant testified that he has not worked since the accident. He added that his body does not work properly now, especially in regard to the right side. All ranch work, he said, is heavy labor. His jobs have always been of a laboring type. He said he was uncomfortable sitting in the hearing in question; he can only sit, stand, or walk for a short period. He said that Dr. B has not released him to work.

The record contains several short notes from Dr. B saying that claimant is "100% disabled." A one and one-half page letter dated March 25, 1997, provides more detail as to why claimant is said not to be able to work; that letter is signed by Dr. B, but is also stamped with a physician assistant's name. The March 1997 letter refers to treatment for three years by Dr. B, says claimant can perform no work and has several injuries to his shoulder and back, and observes that claimant is barely able to ambulate. Spasms and pain are said to affect his activities, and he is said to have "significant cervical and lumbar

disc herniation." In addition, post-traumatic stress syndrome and chronic pain syndrome are mentioned along with severe depression.

All the studies in the record, including MRIs, myelogram, and electromyography show lumbar bulges, but none says there is a lumbar herniation. An MRI of the cervical spine does show a "small contained central herniated [disc] at C6-7 without significant deformity of the thecal sac."

Also in the record is a work hardening report of 1994 which was provided at the request of Dr. B. That report refers to claimant as possibly "test smart," but concludes that he is able "to handle light work demands." An FCE performed in January 1997 said that claimant could work at the "light physical demand level" full time. While any study, including a work hardening course or an FCE, may be considered by a doctor as only one part of the information about a patient or an examinee to be considered in determining the overall condition or treatment of a claimant, a hearing officer can consider such a study in determining whether a claimant has shown that, medically, he can do no work at all.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. In this case, he could consider the amount of explanation given in Dr. B's reports in determining whether claimant could do any work. While the hearing officer could give some weight to Dr. B's reports, whether they provided any explanation or not, he could also question them in light of the various reports of studies in evidence which could be interpreted as not indicating evidence of significant lasting injuries. He could also question a reference to post-traumatic stress syndrome, reported in the letter of March 1997, when no doctor's progress notes of any kind were provided which refer to any such diagnosis or treatment. In short, the hearing officer is not obligated to accept an expert's conclusion (*see* Gregory v. Texas Employers' Insurance Association, 530 S.W.2d 105 (Tex. 1975)), or a doctor's conclusion (*see* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997).

Whether or not a claimant has a realistic chance of finding work is not the standard imposed in determining whether a claimant has attempted in good faith to find work. *See* Texas Workers' Compensation Commission Appeal No. 970890, decided June 27, 1997. The parties stipulated that the claimant sought no work during any of the filing periods in question. Therefore, claimant could only have met the "good faith attempt" test if he had no ability at all, medically, to do any work. *See* Texas Workers' Compensation Commission Appeal 941439, decided December 9, 1994. Claimant must show that he has no ability to do any work and the determination of this question is one of fact for the hearing officer to determine. The Appeals Panel will only overturn a factual determination when it is against the great weight and preponderance of the evidence. In this case, the determination that claimant can do some limited work is not against the great weight and preponderance of the medical evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Christopher L. Rhodes
Appeals Judge