APPEAL NO. 980151
FILED MARCH 10, 1998

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §' 401.001 *et seq.* (1989 Act). A contested case hearing was held with hearing officer. The appellant (claimant) and the respondent (carrier) stipulated that the filing period for the fifth quarter for supplemental income benefits (SIBS) began on July 7, 1997, and ended on October 5, 1997, and that during the filing period the claimant was unemployed. The hearing officer determined that during the filing period the claimant's unemployment was a direct result of his impairment from the compensable injury, he had some ability to work, and he did not make a good faith effort to seek employment and that he is not entitled to SIBS for the fifth quarter. The claimant appealed, contending that the hearing officer erred in determining that he had some ability to work during the filing period and that he is not entitled to SIBS for the fifth quarter and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to SIBS for the fifth quarter. A response from the carrier has not been received.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a Statement of the Evidence that includes lengthy quotations from reports of (Dr. P), the claimant's treating doctor. Neither a lengthy summary of the evidence nor lengthy quotations from the reports of Dr. P will be repeated in this decision. In two reports dated July 10, 1997, Dr. P stated that in his opinion the claimant was not capable of carrying out sustained full-time employment in any occupation for which he had previous experience and skills, that his records do not reveal that the claimant had ever been released, and that the claimant is not employable. Dr. P also completed two reports dated October 9, 1997, in which he said that there is no evidence that he ever returned the claimant to a status in which he was advised to attempt to seek employment; that he has no record of ever returning the claimant to work; and that if the claimant had the skills, he is probably capable of sedentary work. On November 4, 1997, Dr. P wrote that the claimant's present physical condition and language skills make his employability virtually nil.

In Texas Workers' Compensation Commission Appeal No. 931147, decided February 3, 1994, the Appeals Panel stated that if a claimant established that he or she had no ability to work at all during the filing period in question, then seeking employment in good faith commensurate with this inability to work would be not to seek work at all. In Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994, we emphasized that the burden of establishing no ability to work is firmly on the claimant and in Texas Workers' Compensation Commission Appeal No. 941334, decided November 18, 1994, we noted that an assertion of inability to work must be judged against employment generally, not just the previous job where the injury occurred. In Texas

Workers' Compensation Commission Appeal No. 941439, decided December 9, 1994, the Appeals Panel stated "claimant's inability to do any work must be supported by medical evidence or must be so obvious as to be irrefutable (the employee is completely bedridden)." In addition, in Appeal No. 941382, *supra*, we stated that medical evidence should demonstrate that the doctor examined the claimant and that the doctor considered the specific impairment and its impact on employment generally. A claimant who is released to work part time is required to attempt in good faith to seek employment commensurate with the ability to work part time. Texas Workers' Compensation Commission Appeal No. 960480, decided April 24, 1996. In Texas Workers' Compensation Commission Appeal No. 960008, decided February 16, 1996, the Appeals Panel stated that job market and educational concerns may be factors in evaluating the good faith effort made in a job search, but that they do not go to the claimant's medical condition concerning the ability to perform some work.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determinations that the claimant had some ability to work during the filing period in question and that he is not entitled to SIBS for the fifth quarter are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge