APPEAL NO. 980178
FILED MARCH 3, 19998

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 December 30, 1997 with hearing officer. The issue at the CCH was whether the appellant, who is the claimant, was entitled to supplemental income benefits (SIBS) for his ninth and 10th compensable quarters. An issue was added at the CCH as to whether the claimant would be precluded from receiving SIBS for the 10th quarter because he had lost eligibility for 12 consecutive months.

The hearing officer held that the claimant had some ability to work during the filing periods in question and did not attempt to obtain employment commensurate with his ability to work. He further found that his unemployment was the direct result of his impairment.

The claimant has appealed, arguing that the hearing officer equated ability to receive medical treatment with the ability to work and thus erred. The claimant argues inability to work due to severe and intractable pain. Finally, claimant argues that the hearing officer imposed a nonexistent requirement that expert doctors explain the basis for their decisions. The respondent (carrier) responds that the doctor who opined that claimant was unable to work during the filing periods first saw him near the end of the 10th quarter filing period and therefore was not entitled to much weight due to his lack of personal knowledge of the claimant's condition. The carrier recites evidence that it believes support the hearing officer's decision.

DECISION

Affirmed.

Although there were subsequent injuries, the claimant contended that his inability to work stemmed from a slip-and-fall accident that he had on _____, while employed by (employer), in which he injured his left hip and back. He had hip replacement surgery and explained that treatment of his back was somewhat delayed due to the carrier's refusal to cover any such injuries until after a favorable hearing decision in August 1997. Claimant's first treating doctor was (Dr. M), who released claimant to work on August 20, 1996, with restrictions on lifting over 25 pounds. Dr. M recommended a release to light duty beginning at four hours a day and progressing to eight hours a day with no prolonged standing, sitting, bending and stooping, and no overhead lifting. Claimant indicated he had been looking for a job on crutches until he fell at some unspecified time in the parking lot of one of the prospective employers, and thereafter began to experience one of his primary problems, numbness and loss of sensation in his left leg.

It was stipulated that the quarters in question ran from July 17 through October 14, 1997, and October 15, 1997, through January 13, 1998, with the applicable filing periods

running for the preceding quarters. Claimant began treating with a chiropractor (Dr. B), on June 16, 1997; Dr. B indicated in his initial report that the claimant could return to work when sufficiently recovered from his injuries so as to prevent reinjury. Claimant was referred to (Dr. P) for treatment of chronic pain. Dr. P stated on October 9, 1997, that claimant had marked weakness in his left hip; in a report the following month, Dr. P stated in a brief letter that claimant had been unable to work from April through October of 1997 "secondary to his severe pain which has limited his physical activity. He is clearly motivated to attempt to work, but his functional capacity is such that he has not been able to do so."

Claimant testified that he was able to drive and perform tasks around the house. He was able to attend to personal care. He was concerned about numbness and increasing tendency of his left leg to give way after the fall in the prospective employer's parking lot.

The provisions of the 1989 Act that enacted the SIBS program also incorporate the requirement that the injured worker search for employment commensurate with the ability to work to continue the entitlement to SIBS. Section 408.143(a)(3). As such, it is a transition benefit designed to support a worker in his or her return to the workforce before benefits end utterly 401 weeks after the injury date. *See* Texas Workers' Compensation Appeal No. 950114, decided March 7, 1995. Only where there is medical evidence of an inability to work can no search be equated to a "good faith" search commensurate with ability. Being limited to work with restrictions is not the same as being unable to work. Texas Workers' Compensation Appeal No. 941263, decided November 3, 1994.

While we agree that a more general or conclusory medical opinion is not inherently precluded for that fact alone from consideration, we nevertheless would agree that the finder of fact remains free, as sole judge of weight and credibility, to assign it less weight than a more explanatory or detailed opinion. He could, in this case, consider when Dr. B and Dr. P began treating claimant as bearing on their statements that claimant had no ability to work prior to their treatment of him. We do not agree with the claimant's argument that the hearing officer has somehow erroneously equated ability to go through treatment with ability to work. In any case, it was the claimant's burden to prove that his ability was no ability.

Finally, on the second issue, the 1989 Act provides that 12 months of continuous ineligibility for SIBS will preclude future reinstatement to the benefit. Section 408.146(c). Although there was a typographical error in the stipulation as to ineligibility for previous quarters (fifth instead of sixth), there was no dispute that the ninth quarter would represent the quarter in which the 12th month fell.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different

inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

We do not agree that the decision here is not supported by the record and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Christopher L. Rhodes
Appeals Judge