APPEAL NO. 990140

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 on December 15, 1998. The appellant (claimant) and the respondent (self-insured) stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on August 13, 1997, with a 20% impairment rating; that he did not commute any portion of his impairment income benefits; and that the filing period for the first quarter for supplemental income benefits (SIBS) began on July 9, 1998, and ended on October 7, 1998. The claimant contended that he had no ability to work during the filing period and it is undisputed that he made no attempt to find work during the filing period. The hearing officer determined that the claimant's unemployment during the filing period was a direct result of his impairment from the compensable injury. That determination has not been appealed and has become final under the provisions of Section 410.169. The hearing officer also determined that during the filing period for the first quarter the claimant did not in good faith attempt to obtain employment commensurate with his ability to work and that he is not entitled to SIBS for the first quarter. In addition, she made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

4. Claimant's injury to his left elbow and head and damage to his eyeglasses and false teeth were the result of a fall at home.

5. The fall at home was caused by a buckling leg which was weakened as the result of his compensable back injury, which is not a compensable follow-on injury.

**CONCLUSION OF LAW**

4. The compensable injury does not extend to the left elbow, head and damage to Claimant's eyeglasses and false teeth.

The claimant appealed, urged that he had no ability to work during the filing period and that the injuries sustained in the fall are part of the compensable injury, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The self-insured responded, urged that the hearing officer properly applied the law to the facts and that the evidence is sufficient to support the appealed determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We affirm in part and reverse and remand in part.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary will be repeated in this decision. The claimant did not have surgery on his back; completed a medically-supervised chronic pain management program; and on July 30, 1997, Dr. M reported that it was expected that the claimant would be capable of returning to work for a full eight-hour work day with normal rest periods and that a full-duty release to return to work was expected about August 25, 1997. The designated doctor assigned seven percent for specific disorders under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association; 14% for loss of range of motion; and no impairment for loss of motor strength or sensation, noting that both were normal. One off-work slip dated in July, one in August, and two in September 1998 from the claimant's treating doctor simply state that the claimant is unable to work without any explanation, and medical reports from that doctor during the filing period do not mention ability or inability to work.

The claimant testified that since his injury his right leg gives away and that he falls; that he has fallen numerous times; that he fell on August 16, 1998; that he was out for about 45 minutes after he fell; and that he hurt his left elbow and his head when he fell. He said that he is worse than he was at the time he completed the program in 1997 and when Dr. M made his report, that he has helped his father with some light work at the house for about 20 or 30 minutes before he had to stop, that he cannot work safely, and that no one would hire him the way he hobbles around. Medical records indicate that for several years the claimant reported that his leg buckled and he fell and that doctors related that to his degenerative disc disease or chronic low back pain. In a letter dated September 1, 1998, his treating doctor said that the claimant's fall in August 1998 was secondary to his chronic low back pain.

Although the hearing officer did not make a finding of fact that the claimant had some ability to work during the filing period for the first quarter for SIBS, such a finding can be inferred or implied. 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 a claimant's inability to do any work must be supported by medical evidence. 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. In Texas Workers' Compensation Commission Appeal No. 962447, decided January 14, 1997, the Appeals Panel cited earlier decisions and stated that the medical evidence

should encompass more than conclusory statements and should be buttressed by more detailed information concerning the claimant's physical limitations and restrictions and that "bald statements" of an inability to work are of limited use in assessing whether a claimant can work during the filing period because of a lack of any discussion of the nature of and the reasons for the claimant's inability to work. In Texas Workers' Compensation Commission Appeal No. 961918, decided November 7, 1996, the Appeals Panel stated that its comments about medical evidence being more than conclusionary did not establish a new or different standard of appellate review and that a finding of no ability to work is a factual determination which is subject to reversal only if it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The evidence is sufficient to support the implied or inferred determination that the claimant had some ability to work during the filing period for the first quarter. The determinations that the claimant did not in good faith attempt to seek employment commensurate with his ability during the filing period for the first quarter and that he is not entitled to SIBS for the first 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). We affirm the determination that the claimant is not entitled to SIBS for the first quarter.

The Appeals Panel has written numerous decisions concerning falls after a compensable back injury. In Texas Workers' Compensation Commission Appeal No. 961055, decided July 19, 1996, the claimant injured her back in February 1992; her leg began giving away in late 1994 or early 1995; she began using a cane; and in October 1995 she fell at home, injuring her neck. The hearing officer determined that her compensable injury extended to her neck. The Appeals Panel cited cases concerning injuries that naturally result from the compensable injury, stated that where there is at most only a degree of weakening or lowered resistance the evidence does not establish causation by a reasonable medical probability, noted that the claimant's treating doctor opined that there was a direct causal relationship between the two injuries, reversed the decision of the hearing officer, and rendered a decision that the neck injury resulting from the fall in October 1995 was not part of the compensable injury sustained in February 1992. In the case before us, the facts are similar to those in Appeal No. 961055, and other decisions cited in that decision.

In Appeal No. 971314, *supra*, the Appeals Panel affirmed a determination that injuries sustained in a fall in December 1995 are related to and the result of a compensable neck injury sustained in July 1993. It wrote:

> The 1989 Act's definition of "injury" includes damage or harm to the physical structure of the body and a disease or infection "naturally resulting from the damage or harm." Section 401.011(26). In construing the word "naturally" in the context of a predecessor statute, the Austin Court of Civil Appeals in Maryland Casualty Co. v. Rogers, 86 S.W.2d 867 (Tex. Civ. App.-Austin 1935, writ ref'd), stated: "By the word >naturally,' as used in the statute, it is not meant that the disease which is shown to have attacked the victim of the

> accident is such disease as usually and ordinarily follows the accident; but it is only meant that the injury or damage caused by the accident is shown to be such that it is natural for the disease to follow therefrom, considering the human anatomy and the structural portions of the body in their relations to each other." *Id.* at 871. The court in that case also stated that the cause of the injury "set in motion . . . operated continuously through a sequence of events, each flowing naturally from one to the other, . . ." *Id*. at 871. It has been held that where an employee sustains a specific compensable injury, "he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefor, causes other injuries which render the employee incapable of work." Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam* 432 S.W.2d 515). In Texas Workers' Compensation Commission Appeal No. 92553, decided November 30, 1992, the Appeals Panel, citing the definition of "naturally" in Rogers, *supra*, stated: "However, the fact that an injury may affect a person's resistance will not mean that a subsequent injury outside the work place is compensable where the subsequent disease or infection is not one which flowed naturally from the compensable injury. *See* Traders & General Insurance Co. v. Keahey, 119 S.W.2d 618 (Tex. Civ. App.-Amarillo 1938, writ dism'd)."

The Appeals Panel then discussed Appeals Panel decisions concerning "naturally resulted" and wrote:

> The hearing officer's statement of the evidence recites Dr. W's statements that the significant changes at C5-6 could cause swelling and inflammation and impinge on the neural structures leading to claimant's symptoms and that the etiology of her fall appears directly or indirectly related to the C5-6 injury. The hearing officer also mentions Dr. C's x-ray showing the fusion appeared not to be intact. Dr. W's report indicates that Dr. C was also of the opinion that claimant's nonfusion could lead to inflammation and compression of the nerves and cause weakness. The hearing officer also notes that Dr. H did not examine claimant and did not, as he conceded, review all the records pertaining to the 1993 injury, and she states that she did not find his testimony persuasive. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, is to resolve the conflicts and inconsistencies in the evidence including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). That another fact finder may well have drawn different inferences from the evidence does not afford us a basis to disturb the findings.

The hearing officer relied on Appeals Panel decisions concerning falls caused by weakened conditions and made Finding of Fact No. 5 that includes a finding of fact and a conclusion of law. From the wording of Finding of Fact No. 5, it is not clear whether she

made a finding of fact whether the injury to the left elbow and head "naturally resulted" from the _____, compensable injury. We reverse and remand for her to make a finding or findings of fact and a conclusion of law concerning "naturally resulting" from the injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge