

APPEAL NO. 990172

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 410.001 *et seq.* (1989 Act). On December 31, 1998, a hearing was held. He determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 10th compensable quarter. He did find that claimant was entitled to reimbursement of certain expenses for travel to city 1, on August 30, 1998, for medical care. Claimant asserts that findings of fact relating to what he can do, including that he is not medically unable to work, and that a good faith effort to find work was not made, are appealed; his argument was directed at the fact that he was prescribed Valium, which he said interfered with thinking and made him drowsy—these side effects are said to render him unable to work. Respondent (carrier) did not appeal the order to reimburse claimant for travel and replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer), on _____. The parties stipulated that the impairment rating is 16%, that claimant commuted no benefits, that the 10th quarter began on October 23, 1998, and that claimant made no effort to find work in the filing period for the 10th quarter. There was no testimony about his accident or injury in the accident, but claimant did testify that he has had four spinal surgeries. Medical records of Dr. C indicate that claimant hurt his back while "holding a turbo shaft that was on a table and as the table collapsed he was left holding the shaft, while his body was twisted." Dr. S, in a second opinion note dated October 28, 1998, said that claimant has had four previous back surgeries, adding that "not one has improved his clinical situation in his opinion." (The second opinion quoted pertains to a recommended fifth spinal surgery proposed by Dr. H).

Claimant stated that he could not work in the filing period for the 10th quarter, which began in July 1998. Although medical records do not give a date of claimant's last surgery, he answered a question asking whether his last surgery was in the "summer of 1997," by saying "yes"; the benefit review conference report indicates all parties agreed that surgery last occurred in July 1997, the month which is mentioned by the hearing officer in his Statement of Evidence. Claimant agreed that his doctor, Dr. Z, had released him with significant restrictions in December 1997. Claimant also said that with training he would be capable of doing some jobs, but added that he has never done sedentary (paper) work; he has always been a laborer. Claimant also said that the process provides "one problem after another," adding that employers will not hire him because their insurers will not accept him in his present condition, he is very limited in his education, he has had surgery every year, and he still has pain every day.

After providing his December 1997 assessment that claimant could be released to work with restrictions, Dr. Z, thereafter, in February 1998, stated that claimant was "off work" from October 3, 1997, to January 21, 1998; however, Dr. Z also noted in April 1998

that claimant had been to a hearing to determine whether compensation should be paid for a three-month period; he next wrote:

[t]hat was the reason for writing the 2/9/98 note indicating that he had been off work from 10/3/97 to 1/21/98.

The hearing officer as sole judge of the weight and credibility of the evidence (see Section 410.165)), could give significant weight to the above statement in determining the weight to assign to any statement of Dr. Z. While claimant on appeal only argued that he could not work because of his medication, a finding of fact was appealed that said claimant was not medically unable to work during the filing period in question. The above comments certainly address whether claimant can or cannot medically do some work. In addition, Dr. Z does indicate in his records that claimant has been prescribed Valium in the five milligram amount. However, his October 31, 1997, note also indicates, "the combination of the Valium, Tolectin and Ultram seem to be giving reasonable relief." No mention is made of any negative effect of the Valium in this or any other record. No mention is made that claimant cannot work because of the effect of the Valium in this or any other medical record. We conclude after reviewing all the medical records in evidence that the hearing officer was supported by sufficient evidence in finding that claimant was not unable to work during the filing period in question.

The quoted statement pertaining to why Dr. Z said that claimant was "off work" could have effected the weight given another of Dr. Z's comments, which otherwise might have been considered in determining whether there was entitlement to SIBS. Dr. Z said in the same note in April 1998:

In the past, every time that he has started a work hardening program or a vigorous exercise program, he had improved. But each time that he gets to a nearly functional level, the plan gets stopped and he loses ground.

The evidence sufficiently supports the findings of fact in issue on appeal; claimant is able to perform certain functions; claimant is able to perform sedentary work; claimant was not medically unable to work during the filing period; and claimant did not make a good faith effort to find work. The medical evidence in support of these is found in the records of Dr. Z; in addition, Dr. Z's records do not indicate harm to claimant from, or that claimant could not work because of, Valium. We note that claimant testified, in answer to a question about his medication not allowing him to work, by saying, "I don't know."

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:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge