APPEAL NO. 990243

Following a contested case hearing held on January 12, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by finding that the appellant (claimant) has not attempted in good faith to obtain employment commensurate with his ability to work and by concluding that he is not entitled to supplemental income benefits (SIBS) for the eighth compensable quarter. Claimant has appealed this finding and conclusion on evidentiary grounds, asserting that, for the most part, the jobs he sought, which were determined by the hearing officer to be beyond his work capacity, were suggested by the respondent's (carrier) employment specialist. The carrier has responded, urging the sufficiency of the evidence to support the challenged finding and conclusion. Both claimant, in his appeal, and carrier, in its response, identify their respective submissions as related to the eighth quarter.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that on _____, the claimant sustained a compensable injury resulting in an impairment rating (IR) of 15% or greater; that the claimant has not commuted any portion of his impairment income benefits; that the filing period for the eighth compensable quarter began on August 11, 1998, and ended on November 9, 1998; that the claimant's eighth compensable quarter began on November 10, 1998, and ended on February 8, 1999; and that during the filing period the claimant was unemployed and earned no wages. The claimant testified at length concerning his job search during the filing period. The claimant testified that this included applying for jobs suggested by the carrier's employment specialist, seeking other employment on his own and registering with the Texas Workforce Commission. The claimant testified that he is unable to speak English and has a limited education. The medical records indicate that the claimant is limited to sedentary work.

Section 408.142(a) outlines the requirements for SIBS eligibility as follows:

> An employee is entitled to [SIBS] if on the expiration of the impairment income benefit period computed under Section 408.121(a)(1) the employee:
>
> (1) has an [IR] of 15 percent or more as determined by this subtitle from the compensable injury;
>
> (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;

(3) has not elected to commute a portion of the impairment income benefit under Section 408.128; and

(4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

The fact that the claimant met the first and third of these requirements was established by stipulation. The hearing officer's finding that the claimant met the second requirement was not appealed with either party and has become final pursuant to Section 410.169. This case revolved around whether the claimant met the fourth of the above requirements. We have previously held that the question of whether the claimant made a good faith job search is a question of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Applying this standard, we cannot say that the hearing officer erred as a matter of law in finding that the claimant did not seek employment in good faith during the filing period. While it is troubling that the hearing officer based this finding largely on the basis that a number of the jobs that the claimant sought were beyond his limitations, the claimant was apparently directed to a number of these jobs by a person employed by the carrier. However, we have held many times that the claimant is not obligated, under the 1989 Act and the rules of the Texas Workers' Compensation Commission, in effect during the relevant filing period, to cooperate with a vocational rehabilitation or employment specialist hired by the carrier. The converse of this principle is that such cooperation, while certainly

a factor for the hearing officer to weigh, does not necessarily in and of itself establish that a claimant acted in good faith by such cooperation.

The decision and order of the hearing officer are affirmed.

_____
Gary Kilgore
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Phillip F. O'Neill
Appeals Judge