APPEAL NO. 990248

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 13, 1999, a hearing was held. He (hearing officer) determined that the appellant (claimant) was not entitled to supplemental income benefits for the 14th compensable quarter. Claimant asserts that the decision is incorrect, citing medical evidence. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant stated that she hurt her back while working for (employer) on _____. The parties stipulated that carrier accepted liability for the injury, that claimant has an impairment rating of 15% or more, that no commutation of benefits occurred, and that the 14th quarter began on August 1, 1998. (The filing period began on May 2, 1998.)

Claimant took the position at the hearing that she was totally unable to work because of the impairment and cited the medical evidence from her doctor, Dr. M. He indicated in notes provided in June and July 1998 and in an undated letter that claimant could not work. He discussed claimant's numbness and weakness in the lower extremities and stated that the carrier "is not cooperating" with her treatment. He noted lumbar motion to be painful, with claimant "exquisitely tender" in the lumbar area. Dr. M also said that claimant has fibrosis in the area of her lumbar surgery which "trap the nerve roots" causing "severe" pain. Repeatedly, Dr. M said that claimant was unable to work in any capacity due to severe pain and severe limitations of movement coupled with the necessity to use narcotics for pain.

In December 1996, claimant had a functional capacity evaluation (FCE)which said she could function at a sedentary level. That test also noted certain inconsistencies.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. As fact finder he could choose whether to give more weight to either Dr. M's opinions or the findings of the FCE. Whether Dr. M's opinion was said to be conclusory or not, he could give it weight, but was not obligated to do so. The hearing officer certainly may choose to consider whether an opinion is conclusory just as he may, or may not, consider inconsistencies in claimant's FCE. In this instance, he weighed the evidence related to claimant's work ability and concluded that claimant did not show that medically she was unable to do any work at all.

The Appeals Panel will only overturn a factual determination when it is against the great weight and preponderance of the evidence. In this case, there was evidence in support of claimant's position and evidence contrary to it. The fact finder gave more weight

to the evidence indicating some work was possible; this determination is not against the great weight and preponderance of the evidence.

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:

_____
Robert W. Potts
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge