

APPEAL NO. 990299

This appeal arises 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 14, 1998. The appellant (carrier) and the respondent (claimant) stipulated the claimant sustained a compensable injury with a date of injury of _____, and that the filing period for the eighth quarter for supplemental income benefits (SIBS) began on February 4 and ended on May 6, 1998, and the filing period for the ninth quarter began on May 7 and ended on August 5, 1998. It is undisputed that during those filing periods the claimant did not seek employment and was unemployed. The hearing officer determined that the claimant's cervical injuries are the result of her compensable injury; that during the filing periods for the eighth and ninth quarters for SIBS the claimant had no ability to work, she made a good faith effort to seek employment commensurate with her ability to work, and that her unemployment was a direct result of her impairment from the compensable injury; and that she is entitled to SIBS for the eighth and ninth quarters. The carrier appealed those determinations, urged that the evidence is not sufficient to support them, stated that the crux of the case is whether the evidence is sufficient to support the determination that the claimant's cervical condition is causally related to her employment, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's cervical injuries are not part of the compensable injury and that she is not entitled to SIBS for the eighth and ninth quarters. The claimant responded, contended that the carrier's request for review was not timely filed, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that his decision be affirmed.

DECISION

We affirm.

We first address the timeliness of the appeal filed by the carrier. The letter distributing the Decision and Order of the hearing officer is dated Friday, January 22, 1999. The claimant assumed that the Decision and Order was received by the (City 1) representative of the carrier on that day. The records of the Texas Workers' Compensation Commission reflect that the (City 1) representative acknowledged receipt of the Decision and Order on Monday, January 25, 1999; the request for review was filed on February 9, 1999, and not later than the 15th day after the (City 1) representative received the Decision and Order; and it was timely filed.

The Decision and Order of the hearing officer contains a detailed statement of the evidence. Only a brief summary will be contained in this decision. The claimant worked for the employer as a salad maker for about 18 years. In February 1993 she experienced mild neck pain, more severe pain in her shoulders, arms, and hands, and tingling and numbness in her hands. In a letter dated June 30, 1993, Dr. B stated that clinically she has carpal tunnel syndrome; however, electromyographic studies showed the possibility of entrapment syndrome higher than the carpal tunnel. In December 1993 she had a right carpal tunnel release and a right pronator release, had some improvement, but continued to have pain in

the right upper extremity. In 1994 she had a left carpal tunnel release and in 1996 a left pronator release. She attempted to return to work but was not able to work because of pain in her neck, arms, and hands. Dr. L, who performed the four surgeries, referred her to Dr. T. An MRI was performed in November 1997 and revealed that the claimant had advanced degenerative disc disease involving C5-6 and C6-7, small disc herniations at those levels, and minimal indentation of the spinal cord at C5-6. Dr. Y performed a neurological evaluation in September 1998 and opined that the claimant had radiculopathy at C5-6 and C6-7 which very well may have been present since the on-the-job injury in early _____. Dr. Y also said that the claimant needs cervical surgery before she can return to work. Dr. T and Dr. L also reported that the claimant could not work. In his Decision and Order the hearing officer noted that the reports from Dr. Y, Dr. T, and Dr. L on the ability of the claimant were conclusory, they were probative because they were from three doctors.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder and it 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 could 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). The hearing officer's determination that the compensable injury with a date of injury of _____, includes an injury to the cervical area is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly 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). Since we find the evidence sufficient to support that determination of the hearing officer, we will not substitute our judgment for his and affirm that determination. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

In its appeal, the carrier stated that the crux of the case is whether the claimant's cervical condition is causally related to her employment. We affirmed the determination that it is. Dr. L and Dr. T mentioned the claimant's arms and hands in stating that the claimant could not work. The evidence indicates that after the four surgeries the claimant's problems in her upper extremities resulted from cervical problems. Dr. Y said that the claimant could not work until after she recovered from cervical surgery that she needed. Considering the cervical condition to be part of the compensable injury, the evidence is sufficient to support the determinations that during the filing periods in question the claimant had no ability to work, she in good faith sought employment commensurate with her ability

to work, and her unemployment was the direct result of her impairment from the compensable injury and that she is entitled to SIBS for the eighth and ninth quarters.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge