APPEAL NO. 990341

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 February 3, 1999, in (City 1). The appellant (carrier) and the respondent (claimant) stipulated that the filing period for the sixth quarter for supplemental income benefits (SIBS) began on August 17 and ended on November 15, 1998, and that during that filing period the claimant was unemployed. The hearing officer found that during that filing period the claimant's unemployment was a direct result of his impairment from the compensable injury and that he in good faith sought employment commensurate with his ability to work and concluded that he is entitled to SIBS for the sixth quarter. The carrier appealed, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBS for the sixth quarter. A response from the claimant has not been received.

DECISION

We affirm.

The claimant injured his neck on _____; had a fusion at C5-6 and C6-7 on June 20, 1995; reached maximum medical improvement by operation of law on July 14, 1996; had repeat fusion surgery at C5-6 and C6-7 on July 29, 1996; and was assigned a 19% impairment rating. The claimant continued to experience severe pain. The claimant was referred to Dr. M for pain management. The report of a functional capacity evaluation (FCE) that was performed in October 1997 states that the claimant passed 40 of the 44 validity criteria suggesting excellent effort, that failed validity criteria were probably justified secondary to pain, that the FCE results indicate that the claimant could work at the light physical demand level for a full day, that "actual FCE results indicate that [claimant] is not able to work today," and that "[a]dditional medical intervention appears to be necessary before [claimant] will be feasible for employment." In a report dated October 20, 1997, Dr. M stated that based on the FCE he thinks the claimant is employable at light duty; that the claimant still complained of significant pain; that Dr. S wanted the claimant to have another epidural steroid injection; and that the claimant had failed all conservative efforts, including spinal cord stimulation. Dr. M administered an epidural steroid injection at C5-6 on September 28, 1998; and, in a report dated January 7, 1999, Dr. M stated that the claimant did not respond to steroid injections, that the claimant was maximizing the use of Ultram, that the Ultram was not effective in relieving the bulk of his pain, and that he, Dr. M, thought he needed something stronger.

The claimant testified that all of his working life he has performed work related to oil fields, that he was working as a truck driver when he was injured, that that job required lifting he could not now do because of his injury, and that his doctor told him he could not

return to driving a truck. He stated that he lives in a rural area, and that the closest town of any significant size is about 30 miles from his house. The claimant said that he has pain every day; that some days he can do light things like washing dishes for five or 10 minutes, using a computer for 20 or 30 minutes, or light yard work for 15 or 20 minutes; that some days he is not able to do anything but lie down; that that normally lasts for only a few days; and that in September 1998 he was unable to do things for about three weeks. His wife's testimony concerning his condition was consistent with his, including that he was not able to do anything for about three weeks in September. The claimant stated that driving, especially turning the steering wheel, causes severe pain and that he did not think he could drive 30 miles to a nearby town, work a light-duty job, and drive 30 miles to return home. He testified that doctors have told him not to drive after taking pain medication; that his wife normally drives him to doctor's appointments; that he drives to doctor's appointments if she is not able to get off work to drive him; and that if he drives to a doctor's appointment, he does not take his pain medication. His wife's testimony was consistent with that testimony. She also said that she drives when they go places, that she has used egg crates to make a bed in the car, that in October 1998 they went to (City 4) because her father had cancer, that she did all of the driving, and that her husband laid on the bed in the car. The claimant said that he looks in the newspaper and talks with people to find out about jobs, that he stops by employers he knows to see if work is available, that he applies for anything that may be available, and that he would try to do any work he thought he could do. During the filing period the claimant sought work with six employers. He testified that he also went to the Texas Workforce Commission offices in (City 2) and (City 3) to inquire about jobs, that neither of the offices provided him with any leads, and that if he had been provided leads he would have followed up on them. He said that there are few jobs in agriculture and the oil business, the predominant areas of employment in the locality where he lives, because of the drought and the problems in the oil industry.

Whether the claimant made a good faith effort to obtain employment commensurate with his ability to work and whether his unemployment was a direct result of his impairment from the compensable injury are generally questions of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 941154, decided October 10, 1994. The Appeals Panel has generally defined good faith as a subjective notion characterized by honesty of purpose and being faithful to one's obligations. Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995. Good faith is not established simply by some minimum number of job contacts, but a hearing officer may consider "the manner in which the job search is undertaken with respect to timing, forethought and diligence." The Appeals Panel has stated that a hearing officer may consider the reality of the circumstances in which a claimant finds himself and that what constitutes a good faith search in a rural area may differ significantly from what constitutes a good faith search in a more urban setting. In a unpublished decision, the Appeals Panel held that it was appropriate for a hearing officer to consider numerous things including the rural area in which the claimant lived and that the claimant has used the services of the Texas Workforce Commission.

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. In his Decision and Order, the hearing officer stated that considering all of the factors, including the geographical limitations and the claimant's credibility, the claimant minimally established entitlement to SIBS. That different determinations could have been made based upon the same evidence is not a sufficient basis to overturn the determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The determinations of the hearing officer 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge