

APPEAL NO. 990346

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 12, 1999. The appellant (claimant) and the respondent (carrier) stipulated that the seventh quarter for supplemental income benefits (SIBS) began on August 28, 1998, and ended on November 26, 1998. The hearing officer noted that the filing period for the seventh quarter was the 90 days prior to the start of the quarter. He found that the claimant has extensive computer knowledge and skills and that during the filing period for the seventh quarter for SIBS the claimant had the ability to perform limited light-duty type work, that he did not in good faith attempt to find employment commensurate with his ability to work, and that his unemployment was a direct result of his impairment from the compensable injury. The hearing officer concluded that the claimant is not entitled to SIBS for the seventh quarter. The claimant appealed, argued that the evidence established that he had no ability to work during the filing period, urged that the determinations adverse to him are against the overwhelming weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to SIBS for the seventh quarter. The carrier responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant and the carrier relied on the same medical reports and letters from health care providers. The Decision and Order of the hearing officer contains a summary of the evidence and findings of fact that state what Dr. C, the claimant's treating doctor, and Mr. K, a physical therapist who performed a functional capacity evaluation, reported. Briefly, Dr. C and Mr. K reported that the claimant has severe limitations; that they did not think that there were jobs that met his restrictions; that he could not perform the work of an instrument technician that required lifting up to 100 pounds; that he can perform sedentary work; that he could not sit for six hours as required by a sedentary job; that he will have a difficult time trying to relocate into any structured job due to his limited ability to sit, stand, and walk; and that they did not think he could work.

In Texas Workers' Compensation Commission Appeal No. 931147, decided February 3, 1994, the Appeals Panel stated that if a claimant established that he or she had no ability to work at all during the filing period in question, then seeking employment in good faith commensurate with this inability to work would be not to seek work at all. In Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994, we emphasized that the burden of establishing no ability to work is firmly on the claimant and in Texas Workers' Compensation Commission Appeal No. 941334, decided November 18, 1994, we noted that an assertion of inability to work must be judged against employment generally, not just the previous job where the injury occurred. In Texas

Workers' Compensation Commission Appeal No. 941439, decided December 9, 1994, the Appeals Panel stated that generally the claimant's inability to do any work must be supported by medical evidence. There appear to be conflicts in the reports and letters from Dr. C and Mr. K. It was for the hearing officer to resolve conflicts and inconsistencies in the medical evidence. An appeals level body is not a fact finder, and it does not normally substitute its own judgment for that of the hearing officer even if the evidence would support a different result. The hearing officer's determinations that during the filing period for SIBS for the seventh quarter the claimant had the ability to perform limited light-duty work and did not in good faith seek employment commensurate with his ability to work and that he is not entitled to SIBS for the seventh quarter 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence to be 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

Elaine M. Chaney
Appeals Judge