APPEAL NO. 990417

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 3, 1999, a hearing was held. She (hearing officer) determined that the respondent's (claimant) left knee was not compensably injured but that claimant was entitled to supplemental income benefits (SIBS) for the fourth and fifth compensable quarters. Appellant (carrier) asserts that it was error to find entitlement to SIBS for either quarter, citing medical evidence and criticising medical opinion claimant relied upon as conclusory, inadequate (based on pain), and not buttressed by sufficient detailed information. In addition to the assertion of no attempt in good faith to find work, carrier also asserts no direct result was shown for claimant's unemployment. Claimant did not appeal the extent-of-injury issue, but replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when she slipped and fell at work injuring her neck and back. (Discussion at the hearing in this case indicated that there was no issue as to whether or not there was a compensable right knee injury.) The hearing officer found no left knee injury stemming from "the compensable injury." This opinion should not be considered as addressing the right knee one way or the other. As stated, there was no appeal of the determination that there was no compensable left knee injury.

The parties stipulated that there was a compensable injury; that no benefits were commuted; that the impairment rating (IR) was 15% or greater; that the filing period for the fourth quarter began on April 23, 1998; that the filing period for the fifth quarter began on July 23, 1998; and that claimant had no earnings in either filing period. The hearing officer made no finding of fact addressing whether claimant looked for work or not during either filing period. Similarly, no finding of fact was made that claimant could do no work of any kind during either filing period. The hearing officer did say, in her Statement of Evidence, that claimant established through medical records that she was not able to work at all during either filing period. In that Statement of Evidence the hearing officer also accurately characterized Dr. P opinion in June 1998 as not indicating whether claimant could or could not work at the time he saw her.

The hearing officer also described a functional capacity evaluation (FCE) in September 1998 as indicating that claimant could lift "0 pounds." That FCE does state in its Summary that claimant was capable of lifting zero pounds on a frequent basis and zero pounds on occasion. The hearing officer did not discuss another FCE (performed in January 1999--after the filing periods in question) in her Statement of Evidence but did make a finding of fact that said both FCEs said that claimant could not work. The findings of any FCE may be open to reasonable interpretation by the hearing officer and are always information for the physician to consider in providing his determination as to treatment or

condition of a patient. *See* Texas Workers' Compensation Commission Appeal No. 972589, decided January 27, 1998, and Texas Workers' Compensation Commission Appeal No. 972663, decided February 6, 1998, that said an FCE is comparable to other tests and studies a physician orders which the physician may then consider in reaching an opinion. The January 1999 FCE stated that claimant's classification was "less than sedentary" and a block was checked stating "cannot work"; it accurately commented, however, that the work status was to be determined by a physician.

The hearing officer also commented that the medical evidence was "conclusory on the whole." That is a fair summation. Nevertheless, the hearing officer determined that claimant could do no work of any kind--at least that determination is reflected in the Statement of Evidence. The hearing officer could choose to give weight to medical evidence even though it is conclusory. *See* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997. While in many instances a hearing officer is well-advised to give less weight to medical opinions bandied about with no foundation, the opinions of Dr. G were not without some explanation and were set forth in conjunction with two FCEs, which the hearing officer could consider, to conclude that no work was possible.

The hearing officer specifically noted Dr. G's September 24, 1998, report. In addition, the May 18, 1998, report of Dr. G noted that claimant could not grasp things with her left upper extremity without often dropping them. He also noted not only spasm in the cervical spine but also spasm in the lumbar spine. He refers to her pain as "constant." *See* Texas Workers' Compensation Commission Appeal No. 961878, decided November 1, 1996, which pointed out that pain may be a "residual symptom" after spinal surgery and also that pain may be a factor in providing the IR for unoperated lesions. *Also see* Table 49, Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). We note that none of the sections addressing SIBS provide any requirement that ability to work, set forth in Sections 408.142 and 408.143, be considered only under a standard of "objective clinical or laboratory finding" such as is required only in regard to impairment ratings. On September 24, 1998, as mentioned by the hearing officer, Dr. G did say that claimant is unable to lift and cannot grasp with her left hand; he also referred to her pain as ongoing. We note that on September 10, 1998, Dr. G also said that claimant could not lift, noted that she had pain with "all ranges of motion," and noted lumbar spasm. As stated, the FCE did not contradict Dr. G's statement that claimant could not lift.

The medical evidence sufficiently supports the determination that claimant attempted in good faith to find work because it showed, as stated in the Statement of Evidence, that claimant could not do any work of any kind in the two filing periods.

The hearing officer also pointed out that claimant, with these restrictions, could not return to her former line of work with employer (carrying trays and dishes, among other things); that comment is sufficiently supported by the evidence and provides sufficient basis for the determination that claimant's unemployment was a direct result of the impairment.

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:

_____
Elaine M. Chaney
Appeals Judge

_____
Judy L. Stephens
Appeals Judge