APPEAL NO. 990425

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 2, 1999, a hearing was held. He determined that respondent (claimant) was entitled to supplemental income benefits for the 20th compensable quarter. Appellant (self-insured) asserts that Dr. P has said claimant could work and that claimant's current treating doctor, Dr. S, would not allow him to do a functional capacity evaluation (FCE); county also cites authority that medical evidence should encompass more than conclusory statements. The appeals file does not contain a response by claimant.

DECISION

We affirm.

Claimant worked for (employer) on _____, when he was in a motor vehicle accident. The parties stipulated that claimant was injured compensably, that his impairment rating is 17%, that no benefits were commuted, and that the filing period for the 20th quarter began on September 1, 1998. Claimant testified that he has had two spinal surgeries. Dr. S states that the first operation was on January 15, 1992, and the second was on September 30, 1992. Disc surgery and a fusion were performed at C4-5 and a decompression was done at C7-T1.

Claimant did not look for work. While self-insured pointed out that claimant did not see Dr. S during the filing period in question, Dr. S does indicate that he saw claimant on August 19, 1998 (just before the filing period), and on December 9, 1998 (just after the filing period). At both times, Dr. S said that claimant has decreased mobility and can no longer "look up"; weakness and sensory problems in the right arm are also mentioned. Dr. S also states that claimant is not able to lift any weight. Dr. S notes that his request for a cervical CT scan to further evaluate the increased signs of cervical problems has been denied. Dr. S also noted spasms and the need to increase claimant's prescription for scheduled pain killer. He said that claimant cannot work.

On March 19, 1997, Dr. P stated that claimant reported to the therapist conducting the FCE that he could lift nothing greater than 10 pounds; Dr. P said a letter from Dr. S, which restricted claimant to "less than 10 pounds," confirmed this. Dr. P said that claimant's classification would be sedentary. The FCE of March 3, 1997, said that claimant was considered to be able to do sedentary work, but added that such would be "considered very high risk of injury/reinjury." In 1996, Dr. P had said that claimant could return to light work.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The hearing officer weighs medical evidence and may assign less weight to opinions that are conclusory, but he is not precluded from giving weight to conclusory opinions. *See* Texas Workers' Compensation Commission Appeal No. 970834,

decided June 23, 1997. While county cites Texas Workers' Compensation Commission Appeal No. 962447, decided January 14, 1997, that opinion only said that "bald statements" of inability to work "are of limited use," it cited Texas Workers' Compensation Commission Appeal No. 960123, decided March 4, 1996. Appeal No. 960123 was decided on another basis, but did contain language saying that the Appeals Panel has "held that the medical evidence should encompass more than conclusory statements . . . ," citing Texas Workers' Compensation Commission Appeal No. 941696, decided February 8, 1995. *See* the concurring opinion in Texas Workers' Compensation Commission Appeal No. 961827, decided October 25, 1996, and Appeal No. 970834, *supra*, for a discussion concerning what Appeal No. 941696, *supra*, said and concluding that Appeal No. 941696 did not hold that "medical evidence should encompass more than conclusory opinions."

The hearing officer could, and did, give Dr. S's opinions more weight than he did the statements of Dr. P made in 1997 and 1996. He stated that claimant had no ability to work in the filing period in question, and this finding of fact was sufficiently supported by the evidence provided by Dr. S; Dr. S's opinions concerning inability to work are supported, in part, by the FCE of March 1997 which said that while claimant showed an ability to do sedentary work, to do so would be "considered very high risk of injury/reinjury."

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:

_____
Thomas A. Knapp
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge