APPEAL NO. 990477

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 25, 1999. On the single issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 11th compensable quarter. The claimant appeals several findings of fact and a conclusion of law, urging that they are in error and against the great weight and preponderance of the evidence, and that the claimant established she had no ability to work but also made a good faith effort to seek employment commensurate with her ability to work. The respondent (carrier) urges that there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer and asks for affirmance.

DECISION

Affirmed.

Succinctly, on _____, the claimant sustained a back injury when she tripped on a cord and almost fell to the ground but was caught by a coworker. She subsequently had laminectomy surgery on her back, reached maximum medical improvement and was assessed a 16% impairment rating. She has not returned to work and is seeking SIBS for the 11th compensable quarter, the filing period for which ran from January 13, 1998, to April 13, 1998. The claimant urges that she had no ability to work during the period as shown by reports from her doctor, but that she nonetheless made a good faith effort to seek employment by making some 19 prospective job contacts during the filing period. Although she was somewhat vague regarding the particulars of some of her job searches, it appears that most of the contacts were in two malls and in the local area where the claimant lived and spanned some 10 to 12 days of the filing period. There also did not appear to be any searches in January or April, although the claimant said it was possible that she looked for a job in April.

The claimant introduced medical reports from her doctor which indicate the opinion that "at the present time I do not feel that this patient is able to be gainfully employed as she is unable to sit, stand, lift, bend, stoop, or carry for periods of time required to be functional satisfactory employment in any type of occupation." The carrier offered a functional capacity evaluation and medical report from a Dr. S, who opined that the claimant can medically return to work at the medium-duty level and noted that the claimant was most uncooperative and refused to give any reasonable effort on the testing. He also indicated he had viewed videos of the claimant taken by a carrier-employed firm and that the videos substantiate the recommendation for return to medium-duty level work

The carrier offered into evidence two videos from May 1997 and June 1998 which showed the claimant involved in various levels of activity in driving and working in her yard. Her yard activities included prolonged bending and stooping to pull weeds and getting on her hands and knees and crawling to do yard work. The carrier also offered testimony from

the adjuster on the claimant's file, who testified that she had contacted a number of the places listed by the claimant and many did not have any applications on file.

The hearing officer determined that the claimant had some ability to work and did not attempt in good faith to seek employment commensurate with her ability to work. Clearly, there is sufficient evidence to support his determinations, although there is also conflicting evidence. Resolving conflicts and inconsistencies in the evidence and testimony is a matter for the hearing officer. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Section 410.165(a). Although the claimant testified that she did not feel she could work at all but nonetheless looked for some 19 prospective jobs, and that her doctor opined that she was not able to be gainfully employed because of her injury, there was considerable probative evidence contrary to her testimony and the report of her doctor. Of course, the weight and credibility of the witnesses was a matter for the hearing officer to determine and he was not obligated to accept the claimant's testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Regarding the ability to work, the functional capacity evaluation and report of Dr. S provided a sufficient basis for the determination that the claimant had some ability to work, particularly so when considered together with the videos which showed considerable activity inconsistent with no ability to work. We cannot conclude that the hearing officer's determination that the claimant had an ability to work was against the great weight and preponderance of the evidence. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer also determined that the evidence offered by the claimant did not establish a good faith effort to seek employment commensurate with her ability to work. Again, we conclude that this determination is not against the great weight and preponderance of the evidence. King. As indicated, the claimant was somewhat vague in the particulars of much of her job search efforts and it was reasonable for the hearing officer to infer that she had not shown any job search efforts in January or April, and that her search consisted of some 11 days during the filing period. As we have repeatedly stated, it is appropriate for a hearing officer to consider the pattern of the job search efforts;

the forethought, timing, and type and number of positions sought. *See generally* Texas Workers' Compensation Commission Appeal No. 982987, decided February 4, 1999; Texas Workers' Compensation Commission Appeal No. 982512, decided December 2, 1998; Texas Workers' Compensation Commission Appeal No. 971209, decided August 11, 1997; and Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. The hearing officer, considering the totality of the claimant's job search efforts during the filing period, could reasonably infer and determine that a good faith effort had not be proven. Finding the evidence sufficient to support the findings and conclusions, and no reversible error, we affirm the decision and order.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge