APPEAL NO. 990587

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 determined that the appellant (claimant) is not entitled to supplemental income benefits for the ninth compensable quarter. Claimant asserts that medical evidence shows that he is "totally disabled from performing any work," but that he sought employment in good faith in the relevant filing period. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____. Claimant did not testify as to how he was injured but medical records indicate that he stepped in a hole while carrying refrigeration panels, hurting his back. Claimant testified that he had surgery to fuse his spine at L4-5 in December 1994, but added that it "didn't take." He described himself as a pipe fitter but said that he had done mechanic work prior to working as a pipe fitter. He indicated that both Dr. VS and Dr. M have told him that he is disabled. He takes little pain medication because of his reaction to it, but states that water aerobics are helpful to his back. He thinks he may have to have more surgery some day.

The parties stipulated that the injury was compensable, that the impairment rating is 15%, that claimant elected to commute no benefits, and that the filing period for the ninth quarter began on August 22, 1998, and ended on November 20, 1998.

Dr. VS in January 1996 said that claimant could not "return to any form of employment"; but in August 1996, he only said that claimant "is not able to maintain gainful employment." In October 1997, Dr. VS's comment could be interpreted as stronger--he said claimant "continues to be unable to work." However, his 1998 comments provide less support for any consideration of a total inability to work. In May 1998, Dr. VS said that claimant could not do his "regular type of job or any type of heavy or moderate lifting." In August 1998, just before the start of the filing period in question, Dr. VS referred to "severe restrictions," but mentions nothing different from his May 1998 observation, and says that claimant cannot "maintain gainful employment." The "gainful employment" phrase was repeated in November 1998.

Claimant saw Dr. M, who was evaluating claimant for the carrier, in January 1998. He noted that the fusion is not completely united and there is multi-level disc degeneration. Dr. M stated:

> I do not think this gentleman is fit to go back to work as a plumber or pipe fitter . . . . There is no light work available in the plumbing and pipe fitting trade. For this reason he remains disabled.

The above medical opinions sufficiently support the hearing officer's determination that claimant did not establish that he was unable to do any kind of work at all during the filing period in question. *See* Texas Workers' Compensation Commission Appeal No. 972231, decided December 8, 1997, and Texas Workers' Compensation Commission Appeal No. 980879, decided June 15, 1998, as to the relationship of "gainful employment" to the 1989 Act.

Claimant also testified that he looked for work during the filing period. He said he performed his search for work by making contact with 13 employers in November and December 1998. (The filing period ended on November 20, 1998.) While he said he looked for light mechanical work, he also said that he did not think he could physically do it.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She indicates in her Statement of Evidence that claimant conducted his search at the end of the filing period and did not believe he was capable of doing the work he applied for. A hearing officer may consider such matters in determining whether a claimant's attempt to find work commensurate with his ability was made in good faith. The carrier pointed out that while the "new rules" are not in effect for this filing period, they require that a claimant "look for employment . . . every week of the qualifying period . . . ." Considering all the evidence, the determination that claimant "did not make a good faith effort to seek employment" is sufficiently supported, and this finding may be equated to a determination that claimant did not attempt in good faith to find work commensurate with his ability.

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:

_____
Susan M. Kelley
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge