APPEAL NO. 990611

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 28, 1999. Whether the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the 12th quarter depended on whether she had some ability to work during the filing period for that quarter from August 26, 1998, to November 24, 1998. The hearing officer determined that the claimant had no ability to work during the filing period and that she is entitled to SIBS for the 12th quarter. The appellant (carrier) requested review, urged that those determinations are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBS for the 12th quarter. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

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 a claimant's inability to do any work must be supported by medical evidence. In addition, in Appeal No. 941382, *supra*, we stated that medical evidence should demonstrate that the doctor examined the claimant and that the doctor considered the specific impairment and its impact on employment generally. In Texas Workers' Compensation Commission Appeal No. 962447, decided January 14, 1997, the Appeals Panel cited earlier decisions and stated that the medical evidence should encompass more than conclusory statements and should be buttressed by more detailed information concerning the claimant's physical limitations and restrictions and that "bald statements" of an inability to work are of limited use in assessing whether a claimant can work during the filing period because of a lack of any discussion of the nature of and the reasons for the claimant's inability to work. In Texas Workers' Compensation Commission Appeal No. 961918, decided November 7, 1996, the Appeals Panel stated that its comments about medical evidence being more than conclusionary did not establish a new or different standard of appellate review and that a finding of no ability to work is a factual determination which is subject to reversal only if it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The evidence on the ability of the claimant to work during the filing period is conflicting. The claimant was injured on _____, when part of a china cabinet fell on her. She had laminectomies and foraminotomies at C4-5, C5-6, and C6-7. The Texas Workers' Compensation Commission (Commission) referred the claimant to an industrial rehabilitation center for a functional capacity evaluation (FCE). The evaluation began on October 19, 1998; the claimant developed high blood pressure during the FCE; the FCE was stopped; and the FCE was completed on November 17, 1998. The report of the FCE states that the claimant's effort was questionable due to the multiple complaints and inconsistencies noted throughout testing, that functional and physical activities were primarily symptom limited, and that the claimant could work at the light category. Dr. D examined the claimant several times at the request of the carrier. On June 13, 1997, Dr. D advised the carrier that the claimant could return to work with no restrictions if she was so motivated. In a letter dated July 15, 1998, Dr. D wrote:

> Concerning her ability to return to work, she should have no significant restrictions secondary to her neck injury and subsequent surgery. However, given her ongoing complaints of pain, I believe it is unlikely that she will return to gainful employment.

In a letter to the Commission dated October 31, 1997, Dr. E, the claimant's treating doctor, summarized the results of recent tests and said that she complained of chronic neck pain with left upper extremity paresthesia, that examination revealed radiculopathy on the left at C5-6, that her level of pain was substantiated by objective findings, that she was not able to work because of the chronic pain complaints, and that she was totally and permanently disabled due to her chronic neck and left upper extremity pain and headaches. In a letter dated September 23, 1998, Dr. E stated that the claimant had not been able to work since the date of her injury and that she was not able to return to work for the indefinite future.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). In her Decision and Order, the hearing officer noted that the letter of Dr. E dated September 23, 1998, is conclusory, but that when that letter is considered with his earlier letter, the medical evidence is sufficient to establish that the claimant had no ability to work

during the filing period for the 12th quarter. The Appeals Panel has, on several occasions, stated that all of the relevant medical evidence should be considered in making a determination on the ability of a claimant to work during a filing period. The hearing officer's determinations that the claimant had no ability to work during the filing period and that she is entitled to SIBS for the 12th 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. 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:

_____
Thomas A. Knapp
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge