APPEAL NO. 990792

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 March 24, 1999. The issue at the CCH was whether the appellant (claimant herein) was entitled to supplemental income benefits (SIBS) for the 16th compensable quarter of December 27, 1998, through March 27, 1999. The hearing officer determined that the claimant was not entitled to these benefits because he did not make a good faith effort to obtain employment commensurate with his ability to work. The claimant appeals the decision of the hearing officer, contending the great weight of the evidence was contrary to the hearing officer's decision. The respondent (carrier herein) argues that the claimant's request for review was inadequate to appeal the hearing officer's decision and that the decision of the hearing officer is supported by the evidence.

DECISION

Finding our jurisdiction has been invoked, sufficient evidence to support the decision of the hearing officer, and no reversible error in the record, we affirm the decision and order of the hearing officer.

We must first address the question of the adequacy of the claimant's request for review as this matter is jurisdictional. Section 410.202(c) discusses the form of appeals and responses. Early on and repeatedly since, we have held that no particular form of appeal is required and that an appeal, even though terse and unartfully worded, will be considered. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993; and cases cited therein. We have also held that appeals which lack specificity will be treated as challenges to the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. We further note in the case upon which the carrier relies--Texas Workers' Compensation Commission Appeal No. 93824, decided October 27, 1993 (Unpublished)--we found that the appeal was adequate. We find that the appeal is adequate in the present case to invoke our jurisdiction and raise the issue of whether there was sufficient evidence to support the hearing officer's decision.

The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement on October 23, 1993, with a 25% impairment rating (IR); that the claimant has not commuted any portion of the impairment income benefits; that the 16th compensable quarter began on December 27, 1998, and ends on March 27, 1999; and that during the filing period[1] of the 16th compensable quarter

[1]The filing period of a compensable quarter is the 90-day period preceding the beginning of the compensable quarter.

the claimant earned no wages and did not seek employment. The claimant testified that his injury was a low back injury that required a spinal fusion at L4/L5 in 1993 and that he was implanted with a spinal stimulator. The claimant testified that he does not believe he can return to work and that he will probably never be able to return to work due to his back pain and pain medication. The claimant submitted medical evidence stating the he is not capable of manual labor. However, there was also medical evidence that the claimant had capability to work at light to medium functional capacity.

The decision of the hearing officer includes the following finding of fact and conclusion of law:

FINDING OF FACT

2. During the filing period for the sixteenth compensable quarter:

   A. Claimant had some ability to work;
   B. Claimant's unemployment is a direct result of his impairment;
   C. Claimant did not make a good faith effort to obtain employment commensurate with his ability to work.

CONCLUSION OF LAW

3. Claimant is not entitled to SIBS for the sixteenth compensable quarter, (12/27/98 through 3/27/99).

Section 408.142(a) outlines the requirements for SIBS eligibility as follows:

> An employee is entitled to [SIBS] if on the expiration of the impairment income benefit period computed under Section 408.121(a)(1) the employee:
>
> (1) has an [IR] of 15 percent or more as determined by this subtitle from the compensable injury;
>
> (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
>
> (3) has not elected to commute a portion of the impairment income benefit under Section 408.128; and
>
> (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

The fact that the claimant met the first and third of these requirements was established by stipulation. The hearing officer's finding that the claimant met the second

requirement has not been appealed by either party and has become final pursuant to Section 410.169. This case revolved around whether the claimant met the fourth of these requirements. We have previously held that the question of whether the claimant made a good faith job search is a question of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994.

Section 410.165(a) provides that the CCH officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In Texas Workers' Compensation Commission Appeal No. 931147, decided February 3, 1994, the Appeals Panel stated that if an employee established that he or she has no ability to work at all during the filing period, 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." We have likewise noted that medical evidence affirmatively showing an inability to work is required, if a claimant is relying on such inability to work to satisfy the requirements of demonstrating a good faith attempt to find employment. Appeal No. 941382, *supra*; Texas Workers' Compensation Commission Appeal No. 941275, decided November 3, 1994. Finally, we have emphasized that a finding of no ability to work is a factual determination of the hearing officer which is subject to reversal on appeal only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995; Pool v. Ford Motor Co., *supra*; Cain v. Bain, *supra*.

Applying this standard, there was clearly sufficient evidence that the claimant had an ability to work during the filing period. This finding, linked with the stipulation that the claimant did not seek any employment, clearly supports the hearing officer's finding that the claimant did not seek employment commensurate with his ability to work.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge