APPEAL NO. 990883

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 March 26, 1999. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury to his cervical and lumbar spine and right knee on _____; that his impairment rating (IR) is 16%; and that the filing period for the eighth quarter for supplemental income benefits (SIBS) began on October 15, 1998, and ended on January 13, 1999. The hearing officer determined that during the filing period for the eighth quarter the claimant's unemployment was a direct result of his impairment from the compensable injury. That determination has not been appealed and has become final under the provisions of Section 410.169. The hearing officer also determined that during the filing period for the eighth quarter the claimant had some ability to work, did not seek employment, and did not in good faith seek employment commensurate with his ability to work and that he is not entitled to SIBS for the eighth quarter. The claimant appealed those determinations, contending that they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. Essentially, the claimant argues that during the filing period, or at least during more than one-half of the filing period, he had no ability to work. The carrier responded, urged that the evidence is sufficient to support the determinations of the hearing officer, and requesting that his decision be affirmed.

DECISION

We affirm.

After the injury, the claimant lived in a adjoining state and received most of his treatment in that state. The claimant had arthroscopic surgery on his right knee on March 20, 1995. On June 10, 1996, the designated doctor assigned 12% impairment for his right knee, five percent impairment for the cervical spine, and zero percent for the lumbar spine and used the combined values chart to certify a 16% IR. A report of an MRI of the cervical spine dated June 9, 1997, states that the claimant has slight spondylosis of the cervical spine and no evidence of a herniated nucleus pulposus. In a disability certificate dated February 10, 1998, Dr. E released the claimant to "sedentary light work." Dr. E again performed arthroscopic surgery on the claimant's right knee on July 17, 1998, and took the claimant off work. In a letter dated October 5, 1998, Dr. E stated that claimant has what is felt to be cervical radiculopathy at C7-8; that that condition is being treated elsewhere; that he, Dr. E, is currently limiting his treatment of the claimant to the knee problem; and that with respect to the knee, the claimant was able to return to light sedentary duty as of the time of the last visit on September 17, 1998. In a progress note dated October 8, 1998, Dr. E reported that the claimant was still having some difficulty with his knee and complained regarding his neck and lower back; that Dr. R had diagnosed possible cervical radiculopathy and suggested a work hardening program, but that the claimant had not been able to follow through on that; and that he referred the claimant back to Dr. R for an MRI

and evaluation of the neck. A report of an MRI of the lumbar spine dated October 16, 1998, states that the lumbar intervertebral discs are of normal height, that there is a slight decrease in signal intensity primarily at L3-4 and L5-S1 consistent with early degeneration, and that there is not lateralization or evidence of disc herniation. In a progress note dated November 3, 1998, Dr. E stated that the claimant remained "TTD" (total temporary disability) as a result of his back and knee problems. The claimant testified that he moved to a city in Texas in late November 1998, that his brother helped him move, and that they had to stop several times during the trip because he was not able to ride in a vehicle for long periods of time. On November 20, 1998, the claimant was seen by (Dr. H), a chiropractor, in the city to which the claimant moved. Dr. H placed the claimant in an off-work status on November 23, 1998, and on November 27, 1998, withdrew as the claimant's treating doctor. Dr. L, another chiropractor in the same clinic, began treating the claimant and from November 30, 1998, through January 13, 1998, reported that the claimant was in pain, received treatment and was off work until further notice. In a work-status report dated February 1, 1999, Dr. L stated that effective February 8, 1999, the claimant could return to work for two hours a day with the following restrictions: no bending, stooping, kneeling, or crawling; work two hours without a break; stand two-thirds of the time; reach, climb, and balance one-third of the time; use arms above the shoulder one-third of the time; lift, carry, push, or pull not over 15 pounds with such repeated activity limited to seven pounds; and no repetitive lifting.

The claimant cited Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995, and argued that that decision holds that if a claimant is not able to work for more than one-half of a filing period, the claimant is entitled to SIBS. In Appeal No. 950376, the Appeals Panel stated that because the claimant was unable to search for employment as a direct result of his impairment for at least one-half of the filing period, it held that as a matter of law the claimant met the "direct result" criterion for the filing period. In the case before us, the hearing officer determined that the claimant met the direct result criterion and that determination has not been appealed. In addition, the hearing officer determined that the claimant had some ability to work during the filing period without determining that he had no ability to work during a portion of the filing period.

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 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 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, 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). The hearing officer's determinations that the claimant had some ability to work during the filing period and that he is not entitled to SIBS for the eighth 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 appealed determinations of the hearing officer, we will not substitute our judgment for his. 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:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Joe Sebesta
Appeals Judge