APPEAL NO. 990915

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On March 30, 1999, a hearing was held. He determined that appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the first and second compensable quarters. Claimant asserts that he has neck and low back pain and takes medication to counter the pain which inhibits his ability to concentrate; together these result in no ability to do any work of any kind. Respondent (carrier) replied that the evidence does not support that claimant is unable to do any work and asks for affirmance.

DECISION

We affirm.

Claimant worked for (employer) on _____. At that time, he testified, he fell about three feet and struck his left hip. Since the injury, claimant had fusion surgery to his neck at C5-6 on March 13, 1997. He has had no low back surgery. Claimant testified that the surgery helped somewhat but that his right arm is still numb and results in his dropping items on a daily basis. He said he needs to take pain medication daily to limit the pain in his right arm.

The parties stipulated that claimant's impairment rating is 18%, that no income benefits were commuted, that the first quarter began on November 25, 1998, and the second began on February 24, 1999.

Claimant and his wife both testified at his limited ability to do anything. The prescription pain killers and muscle relaxants he takes were said to cause claimant to go back to bed daily after taking them. When not asleep, these drugs were said to affect claimant's concentration. Even by taking the drugs, claimant has very limited use of his right arm and has low back pain. Claimant is 62 years old and has only worked in the oil field at jobs that included no paperwork.

To qualify for SIBS, a claimant must show that he attempted in good faith to find work commensurate with his ability during the filing periods. *See* Sections 408.142 and 408.143. This usually means a claimant must show what efforts he has made to find work through job contacts and applications. If a claimant is totally unable to work because of medical reasons, not because of limited education or limited experience, then the absence of any attempt to find work may, in fact, be a good faith attempt to find work, commensurate with no ability to work. *See* Texas Workers' Compensation Commission Appeal No. 941439, decided December 9, 1994, and Texas Workers' Compensation Commission Appeal No. 951813, decided December 14, 1995. There was no evidence that claimant made any job contacts during either filing period in question.

The medical evidence in the record is from Dr. C, but it only relates to claimant's inability to work relative to his old job in the oil field, such as, on February 1, 1999, Dr. C said that claimant "continues to be disabled and is not capable of returning to his previous employment." Dr. C also said on January 5, 1999, that claimant "was incapable of going back to his previous job" during the period of August 25 through November 24, 1998. In the January opinion, Dr. C said that a functional capacity evaluation (FCE) was done, and added, "I am enclosing their opinion," without any criticism. That FCE, provided in November 1998, said that claimant could perform medium work, full time. Dr. C had said, also in November 1998, "he continues to be disabled to return to his employment."

There were no other medical reports in the record except for reports of studies, such as MRIs, and the designated doctor's report of March 3, 1998.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He could reasonably conclude that Dr. C limited claimant's off-work status relative to his prior heavy work in the oil field; in addition, the FCE, which Dr. C did not contradict, indicated some ability to work. With no medical evidence indicating that claimant could do no work of any kind, the hearing officer was sufficiently supported by the evidence in finding that claimant had not shown that he could do no work. Therefore, with no evidence of any attempt to try to find work, the determination that claimant did not attempt in good faith to find work commensurate with his ability is sufficiently supported by the evidence.

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:

_____
Philip F. O'Neill
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge