APPEAL NO. 990973

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 20, 1999, a hearing was held. She determined that appellant (claimant) had some ability to work and did not attempt in good faith to find work; supplemental income benefits (SIBS) for the 15th compensable quarter were not awarded. Claimant asserts that the hearing officer erred in finding no entitlement to SIBS, saying that she proved "beyond the preponderance of the medical evidence that she total [sic] inability to work. . . ." Claimant asked for a reversal of the decision and a new determination that she is entitled to SIBS. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, the date of her injury. The parties stipulated that claimant sustained a compensable injury on _____. There was no testimony in this case, but the medical evidence in the record indicates that the injury was of a repetitive trauma type based on using a computer. The parties also stipulated that claimant's impairment rating is 15%, that she commuted no benefits, that the 15th quarter began on December 1, 1998, and ended on March 1, 1999, and that claimant sought no employment and earned no wages during the filing period for the 15th quarter.

One of the exhibits admitted as "evidence" is a copy of Texas Workers' Compensation Commission Appeal No. 990276, decided March 24, 1999 (Unpublished), which dealt with the 14th compensable quarter of SIBS. That Appeals Panel decision affirmed a hearing officer's finding of no entitlement to SIBS. That decision referred to evidence that included a July 1998 letter and a December 1998 letter, both from Dr. A; neither letter was included in evidence in the case under review. Dr. A is the treating doctor. The only reports dated as recently as 1998 in evidence include a February 3, 1998, report of Dr. A which discusses claimant's pain and prescriptions, and a referral to Dr. Au for evaluation; nothing was said about claimant's ability or lack of ability to work. The other 1998 report is the March 3, 1998, report of Dr. Au, who stated his impression to be that claimant has reflex sympathetic dystrophy, multiple bilateral upper extremity nerve entrapment syndromes, and myosfascial pain disorder. He recommended compressive garments for the upper extremities to retard swelling. He, too, did not comment about the possibility of work.

On December 17, 1997, Dr. A listed many things that claimant could not do. He said that claimant is "unemployable on a regular basis." He referred to a functional capacity evaluation (FCE), which said she could do sedentary work. (Appeal No. 990276 quoted from Dr. A's December 17, 1997, note.) Also in evidence from 1997 (the date was variously given as January 27, 1997, and December 21, 1997, with reference to an evaluation performed on January 21, 1997) is the required medical examination of Dr. H.

He said that, for claimant to work, it would have to be "in a highly sedentary work position. . . ."

The FCE referred to by Dr. H and Dr. A was done in October 1996. It concluded that claimant could do sedentary work with "significant limitations."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. In matters of SIBS, she applies Section 408.143, which requires that a claimant had "in good faith sought employment commensurate with the employee's ability to work." Texas Workers' Compensation Commission Appeal No. 941439, decided December 9, 1994, said that if a claimant has no ability, medically, to do any kind of work, then that claimant may satisfy the requirement for a good faith attempt to find work "commensurate with ability" by not attempting to find a job because there is no ability to work at all. The 1989 Act does not consider whether SIBS should be paid based on medical opinion, as to whether the claimant is "unemployable," the condition that Dr. A uses to describe claimant. The "unemployable" standard has been used by social security which may be the basis for its use in opinions provided by some medical personnel. *See* Texas Workers' Compensation Commission Appeal No. 961520, decided September 18, 1996. It is not the same as the requirement of the 1989 Act which requires an "attempt in good faith" to find work (which may or may not result in a job).

The hearing officer had to weigh the medical evidence to see if claimant showed that she had no ability, medically, to work at all. In so doing, she was required to consider all the medical evidence. She chose to give more weight to the opinion of Dr. H and to the results of the FCE than she did to the opinion of Dr. A as to unemployability. The evidence sufficiently supports the determination that claimant had the ability to do "light sedentary work" (which reflects that claimant did not show that she medically had no ability to do any work of any kind).

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:

_____
Gary L. Kilgore
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge