APPEAL NO. 991033

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On April 13, 1999, a hearing was held. He determined that appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 11th compensable quarter. Claimant asserts that he was being evaluated for surgery during the filing period, that he made 29 job contacts during the filing period, and that the determination against awarding SIBS is against the great weight and preponderance of the evidence. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when he injured his back. The parties stipulated that claimant's impairment rating is 16%, that he commuted no benefits, and that the 11th quarter began on January 22, 1999. (The filing period would have begun on approximately October 23, 1998.)

Claimant has had four back operations. At the time of the hearing in April, claimant had not heard from one of the second opinion doctors, but in his appeal, he states that surgery was approved and took place on May 13, 1999. (There had been some appointments during the filing period relative to the proposed surgery, but they did not result in approval; after more testing, it appears as if the surgery has been approved and has occurred.) The hearing officer found that claimant was waiting word as to approval for surgery to remove scar tissue; that finding of fact is sufficiently supported by the evidence. Claimant also testified that his last surgery took place in July 1997; he said he is now worse, with muscle spasms in his lower extremities.

While there is an "off work" note from Dr. Z, the treating doctor, saying nothing else except providing dates from October 1997 to January 1998, which was dated February 9, 1998, the parties litigated this SIBS question on the basis that claimant had some ability to work from late October 1998 to late January 1999. A functional capacity evaluation was provided in late 1997, about which Dr. Z agreed in December 1997 that claimant could work with a 10-pound lifting limit, checking that he was in "good medical condition." (Compare to the period of "off work" set forth in the note described at the beginning of the paragraph.)

Claimant provided the names of 29 employers he contacted during the filing period. He said he looked at newspapers from time to time, but did not say he got names of employers with open positions from the paper. The carrier provided information indicating that many of the employers listed had no information about claimant, many had no jobs open at the time, and four said that claimant inquired about getting a signature, but did not fill out an application. Claimant also provided evidence that he visited the Texas Rehabilitation Commission on February 20, 1998; a note from that agency said that he was

very motivated to work. He was advised to request a copy of his birth certificate that day so he could then obtain a "Texas ID."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. In addition to the evidence previously discussed, the carrier provided a video of claimant walking around in September 1998. This is before the filing period in question, but the hearing officer could conclude from the video that claimant moved well, without apparent limitation. The hearing officer found that claimant's restrictions do not allow him to return to his prior employment and that his unemployment is a direct result of the impairment. However, the hearing officer found that claimant did not attempt to find work in good faith, pointing out that in his opinion claimant did not make enough "cold call" contacts to constitute a good faith job search.

The Appeals Panel is not a fact-finding body and will not overturn a hearing officer on a factual determination unless the determination is against the great weight and preponderance of the evidence. In this case, the determination that no SIBS should be paid is not against the great weight and preponderance of 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:

_____
Robert W. Potts
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge