

APPEAL NO. 991145

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 May 12, 1999. The appellant (claimant) and the respondent (carrier) stipulated that the filing period for the 13th quarter for supplemental income benefits (SIBS) was from August 19, 1998, through November 18, 1998, and the filing period for the 14th quarter for SIBS was from November 19, 1998, through February 17, 1999. The hearing officer found that during the filing period for the 13th and 14th quarters the claimant had the ability to perform sedentary work, that he did not seek employment during the filing period for the 13th quarter, that he did seek employment with potential employers during the filing period for the 14th quarter, that he did not in good faith seek employment commensurate with his ability to work during the 13th and 14th filing periods, that during those filing periods the claimant's unemployment was a direct result of his impairment from the compensable injury and concluded that the claimant is not entitled to SIBS for the 13th and 14th quarters. The claimant appealed, contended that he established that he had no ability to work during the filing period for the 13th quarter and that he in good faith sought employment commensurate with his ability to work during the filing period for the 14th quarter, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to SIBS for the 13th and 14th quarters. The carrier responded, urged that the evidence is sufficient to support the appealed determinations of the hearing officer, and requested that her decision be affirmed. The determinations that during the filing periods for the 13th and 14th quarters the claimant's unemployment was a direct result of the claimant's impairment from the compensable injury have not been appealed and have become final under the provisions of Section 410.169.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a detailed statement of the evidence. Only a brief summary of the evidence related to the appealed determinations will be repeated in this decision. The claimant testified that he injured his spine and head while working as a painter, that he had surgery on his back, that he cannot lift heavy things, and that he has vision and memory problems. He said that he looked for work because he was told that he had to look for work to qualify for SIBS; that he needed work in which he could lay down, sit down, and walk; that he has friends who are contractors; that he contacted them; that work is available, but it is too heavy for him to do; that he contacted the places listed on the Statement of Employment Status (TWCC-52) for the 14th quarter; that he explained his problems to the prospective employers; and that they told him they did not have anything for him. The TWCC-52 for the 14th quarter lists 27 prospective employers but does not provide their telephone numbers.

In a letter dated February 18, 1999, Dr. A, the claimant's treating doctor, stated that the claimant was under his care for an _____, injury, and that his work status remained

at a sedentary level for the period of November 19, 1998, to February 17, 1999. In a letter dated March 4, 1999, Dr. A wrote that in his opinion the claimant was totally disabled and that his condition was not expected to change. The letter contains no explanation for the opinion. In a letter dated April 9, 1999, Dr. F, a chiropractor, said that the claimant had surgery and has failed back syndrome; that he suffers from memory loss, insomnia, visual problems, and headaches; that he also suffers from anxiety and depression; and that he has significant strength deficits and is “unable to perform NIOSH standard lift tasks within safe levels.”

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 that a 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.

Whether a good faith effort to obtain employment commensurate with the ability to work was shown is usually a question of fact for the hearing officer. Texas Workers’ Compensation Commission Appeal No. 941741, decided February 9, 1995. Consideration can be given to the manner in which a job search is made and timing, forethought, and diligence may be considered in determining whether a good faith job search was made. Texas Workers’ Compensation Commission Appeal No. 961195, decided August 5, 1996. In Texas Workers’ Compensation Commission Appeal No. 950364, decided April 26, 1995, the Appeals Panel rejected the contention that a certain number of job applications showed good faith and stated the following about good faith:

In common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation.

And in Texas Workers' Compensation Commission Appeal No. 960252, decided March 20, 1996, the Appeals Panel stated that the trier of fact, in determining whether the claimant in good faith sought employment commensurate with the ability to work, sometimes assesses whether undeniable contacts made with prospective employers constitute a true search to reenter employment or are done instead in a spirit of meeting, on paper, eligibility requirements for SIBS. In Texas Workers' Compensation Commission Appeal No. 950592, decided May 25, 1995, the Appeals Panel affirmed the determination of the hearing officer that the claimant did not make a good faith effort to seek employment where he sought employment for jobs that he did not think he was capable of performing with his restrictions rather than seeking employment with jobs that were within his restrictions.

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). An appeals level body is not a fact finder, and it 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). In her Decision and Order, the hearing officer stated that during the filing period for the 14th quarter, the claimant's job search was random and without form, that some jobs sought exceeded his limitations, that the claimant was convinced he could not work and was going through the motions, and that his efforts appeared to be geared toward getting SIBS rather than finding employment. The hearing officer's determinations that during the filing periods the claimant had some ability to work and did not in good faith seek employment commensurate with his ability to work and that he is not entitled to SIBS for the 13th and 14th quarters 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 determinations of the hearing officer, we will not substitute our judgment for hers. 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:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge