

APPEAL NO. 991215

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 17, 1999, a hearing was held. She determined that appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 12th compensable quarter. Claimant asserts that he disagrees with Finding of Fact No. 2 which said he was released to return to regular work prior to the relevant filing period and with Finding of Fact No. 3 which said that he does not have significant lasting effects from the injury with permanent restrictions. The appeals file does not contain an appeal by the carrier of the determination that claimant attempted in good faith to find work during the relevant filing period; it also contains no reply by carrier to claimant's appeal requesting that SIBS be awarded.

DECISION

We affirm.

Claimant worked for (employer) on _____. He was asked at the hearing how he was injured. The audio reflects claimant's answer addressing that his right shoulder popped and he gave notice. He has not had surgery to the right shoulder. He testified that surgery to the shoulder is being considered now, but agreed that there had also been consideration given to surgery in 1997.

The parties stipulated that the claimant had a compensable injury to the right shoulder and both the cervical and thoracic spine with a 17% impairment rating (IR) and that the filing period for the 12th quarter began on November 25, 1998, and ended on February 23, 1999. The stipulation as to injury did not include any knee injury.

The medical records offered into evidence were very limited. A subsequent medical report dated October 19, 1998, from Dr. G said that claimant had "severe pain right neck and shoulder." He also noted right knee pain. Dr. C stated on December 8, 1998, that claimant had chronic pain in the neck and shoulder area; he added that claimant's "recent" knee surgery caused him to use crutches which increased the shoulder pain. He said that range of motion (ROM) of the shoulder was full but added there was some unspecified limit to the ROM of the neck. The medical documents provided by carrier all related to claimant's surgery to the right knee and subsequent care for the knee. Although physical therapy notes indicate a slow recovery from the knee surgery, the only physician's note describing restrictions, or the lack of restrictions, is a Return to Work Notice signed by Dr. G on March 31, 1999, which said that claimant was released to "full time work with no restrictions" on November 2, 1998. (The relevant filing period began on November 25, 1998.)

Claimant testified that he had surgery to his right knee on October 30, 1998 (less than one month prior to the beginning of the relevant filing period--and three days before he was released to work). He said he wore a brace for the knee for "six weeks, off and on"

thereafter. He did not dispute a note by a physical therapist, however, which said that he was still wearing the brace on December 21, 1998 (approximately one month into the filing period).

On February 8, 1999, a physical therapist noted that claimant's progress was "slow [due to] prolonged post-surgery immobilization"; claimant commented that this entry appeared because "I had it on" (apparently referring to the brace).

A note by Dr. F on September 15, 1998, stated that claimant had "slipped on a wet floor at (grocery store) _____ injury to right knee." Claimant on cross-examination said his knee was injured while he was working for employer, but that he did not pursue it as a claim. At one point, he said it happened when he hurt his shoulder, but he later agreed with the date of _____, several months after the shoulder injury; he, still later said, though, that he was not back at work in _____. He did say that he has no claim for the knee injury.

The hearing officer found that claimant attempted in good faith to find work, and there is no appeal as to that point. She found that claimant did not sustain significant lasting effects with permanent restrictions from the compensable injury to the right shoulder, and the cervical and thoracic spine and also that claimant's unemployment was not a direct result of the impairment from the compensable injury. While claimant's appeal disagrees with Finding of Fact No. 2, which said that claimant was released to return to regular duty employment prior to the filing period, and claimant states that he was restricted to lift no more than 30 pounds and was not to reach overhead, the record contains no indication of any restrictions placed on claimant. As stated, Dr. G, on March 31, 1999, said claimant was released to "full time work with no restrictions" as of November 2, 1998.

Claimant also disagreed with Finding of Fact No. 3, which said claimant did not sustain significant lasting effects with permanent restrictions, by saying that he has an IR of 17%, that he needs surgery to his right shoulder, and that he had injections to that shoulder during the filing period. As previously noted, claimant agreed that surgery had also been considered since 1997.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. With evidence that claimant was walking with a brace on his knee as late as February 8, 1999, when the filing period ended on February 23, 1999, as a result of surgery less than a month before the filing period for an injury that was not part of the compensable injury, and with no evidence presented at the hearing even in the form of the claimant's own testimony that he had any restrictions during the filing period in regard to his impairment from the compensable injury, the hearing officer was sufficiently supported by the evidence in finding that the unemployment was not a direct result of the impairment.

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:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge