

## APPEAL NO. 991221

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 12, 1999, a contested case hearing (CCH) was held. With regard to the issues before her, the hearing officer concluded that the appellant/ cross-respondent (claimant) was not entitled to supplemental income benefits (SIBS) for the first, second, third, fifth, and sixth compensable quarters, but was entitled to SIBS for the fourth compensable quarter and, as a consequence, had not permanently lost entitlement to SIBS for not being entitled to them for 12 consecutive months. The claimant appeals, arguing that the hearing officer erred in finding that the claimant did not in good faith seek employment commensurate with her ability to work during the second, third, and fifth compensable quarters and was entitled to SIBS for these quarters. The respondent/cross-appellant (carrier) replies that the hearing officer's finding that the claimant did not make a good faith job search during the filing periods for the second, third and fifth compensable quarters were supported by the evidence and her decision that the claimant was not entitled to SIBS for these quarters should be affirmed. The carrier appeals the hearing officer's determination that the claimant was entitled to SIBS for the fourth compensable quarter, arguing that the hearing officer erred in finding that during the filing period for this compensable quarter that the claimant in good faith sought employment commensurate with her ability to work and that her unemployment during the filing period was a direct result of her impairment from the compensable injury. The carrier also argues that if claimant was not entitled to SIBS for the fourth compensable quarter, she would be permanently barred from SIBS since she was not eligible for the first, second and third quarters. The claimant responds that there was sufficient evidence to support the hearing officer's finding of entitlement to SIBS for the fourth compensable quarter and her determination that the claimant was not permanently barred from SIBS. There was no appeal of the hearing officer's determinations that the claimant was not entitled to SIBS for the first and sixth compensable quarters and these determinations have become final pursuant to Section 410.169.

## DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, and received an impairment rating of 19%. The parties also stipulated that the claimant had not commuted any portion of her impairment income benefits. The claimant described her injury and there was substantial medical evidence concerning the claimant's injury, which was bilateral carpal tunnel syndrome that had resulted in a number of surgeries. The claimant testified that during the filing periods for the compensable quarters in question, she sought employment. The carrier checked into the job contacts the claimant had made and contended that the claimant had not made all the job contacts she asserted. Thus, there was a factual dispute in regard to each of the compensable quarters as to how many job contacts the claimant had made. There was evidence from the

claimant and in the medical records that the claimant continues to be seriously restricted as a result of injury, although the medical evidence clearly indicated that the claimant was capable of limited work.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBS after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 130.102(b) (Rule 130.102(b)), the quarterly entitlement to SIBS is determined prospectively and depends on whether the employee meets the criteria during the prior quarter or "filing period." Under Rule 130.101, "filing period" is defined as "[a] period of at least 90 days during which the employee's actual and offered wages, if any, are reviewed to determine entitlement to, and amount of, [SIBS] for any quarter claimed.

We have previously held that both the question of whether the claimant made a good faith job search and whether the claimant's unemployment was a direct result of his impairment are questions of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard of review there is certainly evidence to support the hearing officer's findings regarding good faith job search. The claimant testified that she looked for jobs at number of places during the qualifying period and the hearing officer accepted this testimony. We have stated that a finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers'

Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers'  
Compensation Commission Appeal No. 950771, decided June 29, 1995.

The decision and order of the hearing officer are affirmed.

---

Gary L. Kilgore  
Appeals Judge

CONCUR:

---

Philip F. O'Neill  
Appeals Judge

---

Alan C. Ernst  
Appeals Judge