APPEAL NO. 991226

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On May 18, 1999, a hearing was held. She (hearing officer) determined that the appellant (claimant) was not entitled to supplemental income benefits for the third compensable quarter. Claimant asserts that he was enrolled "full time" in college during the filing period and, in addition, made efforts to find work, which show that the decision 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 _____. The medical records show that he fell from a scaffold on that day separating both shoulders, injuring his right knee, and sustaining a compression fracture at T11 of his spine, along with injury to his low back; he was hospitalized for over a week. Claimant has had multiple operations to his knee.

Findings of fact made, about which there is no appeal, included that the injury was compensable, that claimant had an impairment rating of 15% or more, that claimant commuted no benefits, and that claimant had not returned to work making at least 80% of his preinjury wage during the filing period. While there was no stipulation as to the dates of the filing period or as to the third compensable quarter, the issue itself recited that the quarter began on October 16, 1998, and the parties referred to the filing period as generally running from July 15 to October 15, 1998.

Claimant provided a Statement of Employment Status (TWCC-52) indicating that he made seven job contacts during the filing period. He testified that he did not apply for any job during the filing period.

In March 1998, claimant underwent a functional capacity evaluation which showed that he could do sedentary work, part time. An examination by Dr. K, also in March 1998, performed on behalf of the carrier, also said claimant was capable of sedentary work with a 10-pound lifting limit, with no overhead work, and with the ability to change position as needed. A doctor treating claimant, Dr. R, on July 14, 1998, just before the beginning of the filing period in question, said that claimant's physical capacity is "quite low", pointing out that he should not lift more than "5-10" pounds, should not squat, should not stand for over one hour, and is depressed. He concluded by saying that claimant's ability to work is impaired.

The hearing officer concluded from the evidence that claimant was able to do some work. Claimant did not directly state that he could not work at all, but testified that he did look for work and did begin classes on September 8, 1998, in a program to become an optician. He added that he will graduate in May 2000. He agreed that during the semester beginning on September 8, 1998, he was enrolled in courses totaling 11 hours, which he

also agreed was not a "full load." Claimant had testified earlier that at the time of the hearing, he was taking 19 hours, adding that 12 or more hours is a "full load."

Texas Workers' Compensation Commission Appeal No. 981804, decided September 14, 1998, said that when a claimant "was engaged in course work [which] was a full-time schedule," the hearing officer could determine that the requirement regarding "good faith effort" was met. In that case, the claimant was taking courses toward a licensed vocational nurse degree, which may be comparable to a course of study to become an optician. However, that case indicated that the "full-time schedule" was maintained throughout the filing period in question. That case did not say, however, that, even in those circumstances of a full-time schedule throughout the filing period, the hearing officer was compelled to find such study amounted to an attempt in good faith to work commensurate with the ability to work.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. In contrast to Appeal No. 981804, *supra,* the claimant under consideration in this appeal did not begin classes until September 8, 1998, over half way through the filing period in question. Even then claimant took 11 hours of course work, which he characterized as less than a "full-load." As stated, the factual issue of good faith is a matter for the hearing officer to decide. Given the evidence as presented, she did not have to conclude that claimant was enrolled "full-time," as claimant states in his appeal. Unless her determination is against the great weight and preponderance of the evidence, the Appeals Panel will not overturn it. In this case involving some ability to work and some, but not a great number of, job contacts coupled with school enrollment for less than half of the filing period at a level less than "full-time," we cannot conclude that the hearing officer's decision was 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

_____
Philip F. O'Neill
Appeals Judge