APPEAL NO. 991244

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On May 12, 1999, a hearing was held. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBS) for the ninth compensable quarter. Appellant (carrier) asserts that medical evidence shows an ability to work, citing functional capacity evaluations (FCE) in 1997 and 1999, adding that medical evidence of an inability to work cannot be conclusory, and stating that the medical evidence that does indicate an inability to work does so because of a noncompensable mental condition. In addition, carrier states the mental condition "is the sole reason she cannot work," which indicates that her unemployment is not "a" direct result of the impairment. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked at a (employer) on _____. At that time she was using a buffer which in some manner injured her hands. There are no medical records from the time of the injury, but there are records indicating that claimant has had four surgeries to her arms; three in 1995 and one in 1997. Claimant stated that during the 1997 operation, her heart arrested, but the operative report for that surgery says nothing of any such complication.

The parties stipulated that the impairment rating was 15% or greater and that the filing period for the ninth quarter began on September 26, 1998, and ended on December 24, 1998.

Claimant testified that during the filing period of the ninth quarter she thought she had no ability to work but that her doctor, Dr. F, encouraged her in late November 1998 to try to work. (Dr. F provided a release to work a with five-pound weight limit and no repetitive use of her hands on November 20, 1998, to be effective November 23, 1998.) She said that she attempted to work, on a trial basis, in a flower shop in late November 1998, but dropped vases and could not use her hands, and was not hired. She received no money for the less than one day of work. She testified further that after that attempt she reported her swollen hands and pain to Dr. F, and on December 3, 1998, Dr. F noted that she could not close her fingers. Dr. F issued a short letter that day saying that claimant is "currently unable to work due to pain which has persisted since surgery for work related injuries."

Prior to the beginning of the filing period in question, September 26, 1998, claimant had been examined by Dr. S in April 1997 (also prior to her last surgery); he thought she could do limited work that did not require the use of her left upper extremity. An FCE conducted in February 1997 (also prior to her last surgery) had indicated that she could do "sedentary-light" work.

Just prior to the beginning of the filing period, on September 8, 1998, Dr. Sa D.C. wrote to Dr. B stating that at Dr. B's request he was doing an independent chiropractic examination of claimant; he also referred to Dr. B as the treating doctor. Dr. Sa signed his report, however, as "TWCC [Texas Workers' Compensation Commission] Designate [sic] Doctor." His report may be open to question since he diagnosed reflex sympathetic dystrophy (RSD). (Dr. F in November 1998 said there were no signs, clinically or radiographically, of RSD.) However, Dr. Sa in perhaps mislabeling claimant's problem as RSD, did so in regard to claimant's upper extremities, the acknowledged site of her compensable injury. He concluded that claimant "is unable to perform any work activity at this time." He added that she had been unable to get a job and "is chronically depressed by her disability."

Claimant was treated for depression by Dr. Fo at least as early as November 19, 1998, because he stated on November 19, 1998, that claimant's major depressive disorder was not temporary. He indicated that claimant was unable to do certain functions that would inhibit holding a job. After claimant's failed one-day attempt to work, Dr. F provided a short form on December 14, 1998, indicating that claimant could not work because of her pain and range of motion deficits. For some reason he later, on March 25, 1999, provided a similar form purporting to address a time period beginning on December 1, 1998 (prior to the last such form dated December 14, 1998), which said claimant was unable to work based on pain, range of motion deficits, swelling, and loss of muscle strength. Then on April 23, 1999, Dr. F wrote that, based on his examination of claimant "and" on "my review of the statement dated 11/19/98 from the psychiatrist, it is unlikely that she can work in any capacity." (There was no evidence in this letter or in any other document at the hearing as to when Dr. F reviewed the November 19, 1998, comments of Dr. Fo; none of Dr. F's notes made within the filing period, which ended on December 24, 1998, referred to claimant's psychiatric treatment.) The November 19, 1998, report of Dr. Fo does provide some indication that claimant was unable to work in the latter part of the filing period because of both her compensable injury and the mental condition (there was no issue at this hearing as to whether or not claimant's mental condition was part of her impairment).

While carrier argued that the April letter of Dr. F indicated that claimant's inability to work was based on the psychological condition, which carrier said was not part of the injury, Dr. F's April note clearly bases the inability to work on both his examination (which may have been reasonably inferred to have dealt with the upper extremities) and the report of Dr. Fo. In addition, there is no indication that Dr. F meant the April 1999 letter to apply to claimant's condition during the filing period of September 26, 1998, to December 24, 1998. Carrier also argued that an FCE done on March 3, 1999, showed that claimant could do light-medium work, but claimant said that she hurt so bad after one day of that examination that she reported to Dr. F, and he instructed her not to return for the second day; she argued that she could not finish the test. The FCE in question does show that claimant did not return for the second day, and that test was given over two months beyond the filing period in question.

While carrier implies that Dr. F's reports are conclusory, that is not the test upon review by the Appeals Panel. The test is whether the determination of the fact finder is against the great weight and preponderance of the evidence. *See* Texas Workers' Compensation Commission Appeal No. 961918, decided November 7, 1996. Dr. F also discussed claimant's condition in his progress notes, such as the fact that claimant could not close her fingers fully, had swelling, and had pain; all relevant records may be considered in determining whether Dr. F's opinion is conclusory or not. The fact finder may then choose to give little weight to medical opinion that is considered conclusory, but the fact finder may choose instead to give a conclusory opinion significant weight. *See* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He could consider that the medical opinion of Dr. F in regard to the filing period in question was that claimant could not work. He could also interpret Dr. F's release to let claimant try to work in late November as actually showing, by the results of that work, that claimant could not work. As noted, Dr. F without delay then stated in early December that claimant could not work. The hearing officer did not have to give as much weight to the test results of the 1997 FCE, which showed some ability to work, as he did to the opinion of Dr. F or any other medical doctor. In addition, some weight could be given the September 8, 1998, opinion of Dr. Sa which was given after the 1997 FCE and said that claimant could not work. The determination that claimant was unable to work is sufficiently supported by medical evidence.

Carrier also argued that the April 1999 note of Dr. F showed that claimant's unemployment was the direct result of the mental condition. However, as stated, Dr. F's April note bases claimant's inability to work on both the findings of his own examination and the opinion of the psychiatrist. Since the unemployment only has to be "a" direct result of the impairment (*see* Texas Workers' Compensation Commission Appeal No. 960008, decided February 16, 1996), the April 1999 note and other evidence relevant to the filing period in question sufficiently show that claimant's unemployment was "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:

_____
Philip F. O'Neill
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge