APPEAL NO. 991376

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 June 8, 1999. The appellant (carrier) and the respondent (claimant) stipulated that the filing period for the seventh quarter for supplemental income benefits (SIBS) began on July 4, 1998, and ended on October 2, 1998. The hearing officer found that during the filing period the claimant attempted in good faith to obtain employment commensurate with his ability to work and that his underemployment was a direct result of his impairment from the compensable injury and concluded that he is entitled to SIBS for the seventh quarter. The carrier requested review, urged that those determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust, and requested that the Appeals Panel reverse those determinations and render a decision that the claimant is not entitled to SIBS for the seventh quarter. A response from the claimant has not been received.

The hearing officer also determined that the carrier is entitled to reduce the claimant's future SIBS to recoup the overpayment of SIBS for the fifth quarter. That determination has not been appealed and has 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 and numerous findings of fact. Only a brief summary of the evidence will be included in this decision. On _____, the claimant sustained serious burns, mainly from his neck to his waist, while working as a plumber and underwent four surgeries, including skin grafts, because of those burns. On February 18, 1998, the claimant began working for another plumbing company in a smaller city. A functional capacity evaluation dated April 29, 1998, indicates that the claimant was able to perform unlimited moderate work and heavy duty work with restrictions. On July 13, 1998, the claimant saw his treating doctor, Dr. J, because of pain in his neck and back. The claimant testified that he quit working for the second plumbing company at the end of July 1998 because his pain was so bad that he could no longer perform the work on a regular basis. In a follow-up note dated October 5, 1998, Dr. J said that his impression was lumbar pain, myofascial pain syndrome, and cervical pain and that the claimant was administered lumbar blocks at the L2, 3, 4, and 5 and S1 levels on both sides. In a letter dated November 6, 1998, Dr. J stated that the claimant had been working as a plumber full time; that because of his medical condition he was not able to sustain the long hours and heavy work required in his line of work; and that the claimant is seeking jobs where he can work with his own schedule and at his own pace since the pain limits him to be able to work eight hours consecutively.

The claimant testified that the carrier referred him to the Texas Rehabilitation Commission (TRC); that he went to TRC; that because of his experience in plumbing and the licenses he had, it was thought that becoming a plumbing subcontractor was the thing for him to do; that TRC paid for some plumbing tools and training for him; that the owner of the last plumbing company he worked for thought there would be plumbing work for him; that he contacted that plumbing company and 10 other companies in an effort to obtain work as a plumber; that he was not able to get work; that he was not able to submit bids on plumbing contracts because he did not have a license as a master plumber; that some of the reasons given for not hiring him was the weather and work was not available; but that when he was working, he was required to work overtime and work was available. He said that during the filing period he did not do any work after he stopped working for the second plumbing company.

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). A hearing officer may consider medical evidence with a date outside the filing period, especially when the medical evidence is dated close in time to the filing period and relates to the filing period. In his Decision and Order, the hearing officer stated that the claimant's statements that pain prevented him from working effectively were credible and were supported by medical evidence. 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). The hearing officer's determinations 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 his. 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:

_____
Susan M. Kelley
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge