APPEAL NO. 991431

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 sixth quarter for supplemental income benefits (SIBS) began on November 12, 1998, and ended on February 10, 1999. The claimant did not work nor did he seek employment during the filing period, but contended that he had no ability to work during the filing period. The hearing officer determined that during the filing period the claimant was totally unable to work and that he is entitled to SIBS for the sixth quarter. The carrier appealed, contended that the evidence conclusively demonstrated that the claimant had an ability to work light duty during the filing period, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBS for the sixth quarter. A response from the claimant has not been received.

DECISION

We affirm.

The claimant sustained a compensable low back injury on _____. Dr. D performed laminectomies, foraminotomies, and fusions at L4-5 and L5-S1 on April 7, 1998. A functional capacity evaluation was performed by a physical therapist. In a report dated February 1, 1999, he wrote:

> [Claimant] was extremely guarded with all activities and was pain limited with low back pain. He has very guarded trunk range of motion and extremely poor flexibility and general conditioning.
>
> According to the results of the functional capacity testing today, [claimant] exhibited the physical capabilities of doing partial squatting, occasional kneeling, occasional overhead reaching, pushing and pulling up to 30 lbs average force occasionally, climbing a ladder, sitting up to 10 minutes duration at one time, alternate sitting, standing and walking activities for short distances, and lifting up to 20 lbs from table to shoulder height occasionally. [Claimant] was unable to perform forward bending or lifting from the floor level.
>
> In general, he exhibits the physical capabilities of performing some light work physical demands. Light work is defined as exerting up to 20 lbs of force occasionally, 10 lbs or less of force frequently, and a negligible amount of force constantly to move objects. He would need to be able to change positions frequently from sitting to standing or walking.

In an office visit note dated April 5, 1999, Dr. D wrote:

> He continues to be markedly symptomatic, rating his pain at a 6 on a 1-10 scale, with a 75% back and 25% in both legs, more on the left than the right.
>
> He is taking Ultram and Vicodin for the pain. X-rays taken today show that his implants appear to be in excellent position.
>
> [Claimant] tells me that he is somewhat better from the surgery but still has considerable pain.
>
> PHYSICAL EXAMINATION: Back range of motion moderately limited. There is a well-healed incision. Straight leg raising is positive bilaterally at 60 degrees. He has numbness in L-4 distribution on the left.
>
> REFLEXES: knee jerk normal on the right, absent on the left. Ankle jerks traced bilaterally. No pathological reflexes or Babinski's are noted.
>
> IMPRESSION: Status postop two level ALIF for severe mechanical back pain, secondary to internal disc disruption. Patient has continued significant pain which has been refractory to multiple medical interventions.
>
> RECOMMENDATIONS:
>
> 1. I am going to refer [claimant] to [Dr. AC] for pain management recommendations. He may be a candidate for a pain pump or spinal cord stimulator.
>
> 2. I am going to obtain a lumbar MRI scan with and without gadolinium. He has not had any imaging procedures except for plain films since his surgery a year ago.
>
> 3. [Claimant] is not able to seek or obtain employment at this time, and he has not been released to do so. His neurological and clinical picture are not compatible with any work status that I am familiar with. He is in the process of receiving further medical care, and may be a candidate for pain procedures in the future. I do not anticipate that this status will change any time in the near future.
>
> 4. We will see him every three months and give an update, but I think it would be reasonable to assume that he is not going to become capable of seeking employment anytime in the near future, in all medical likelihood.

In Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994, the Appeals Panel emphasized that the burden of establishing no ability to work is firmly on the claimant. In Texas Workers' Compensation Commission Appeal No. 941334, decided November 18, 1994, we noted that an assertion of inability to work must be judged against employment generally, not just the previous job where the injury occurred. In Texas Workers' Compensation Commission Appeal No. 941439, decided December 9, 1994, the Appeals Panel stated that a claimant's inability to do any work must be supported by medical evidence. In addition, in Appeal No. 941382, *supra*, we stated that medical evidence should demonstrate that the doctor examined the claimant and that the doctor considered the specific impairment and its impact on employment generally. While it is preferable for medical evidence concerning a claimant's ability to work to have been rendered during the filing period in question; medical evidence falling outside the filing period, especially that rendered close in time to the filing period, can be relevant to determine ability to work during the filing period. Texas Workers' Compensation Commission Appeal No. 941649, decided January 26, 1995. In Texas Workers' Compensation Commission Appeal No. 962447, decided January 14, 1997, the Appeals Panel cited earlier decisions and stated that the medical evidence should encompass more than conclusory statements and should be buttressed by more detailed information concerning the claimant's physical limitations and restrictions and that "bald statements" of an inability to work are of limited use in assessing whether a claimant can work during the filing period because of a lack of any discussion of the nature of and the reasons for the claimant's inability to work. In Texas Workers' Compensation Commission Appeal No. 961918, decided November 7, 1996, the Appeals Panel stated that its comments about medical evidence being more than conclusionary did not establish a new or different standard of appellate review and that a finding of no ability to work is a factual determination which is subject to reversal only if it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The trier of fact may believe all, part, or none of any witness's 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). In a case such as the one before us where both parties presented evidence on the ability of the claimant to work during the filing period, the hearing officer must look at all of the relevant evidence to make a factual determination to resolve that question and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determination of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could 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 that during the filing period the claimant was totally unable to work and that he is entitled to SIBS for the sixth quarter 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, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge