APPEAL NO. 991557

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 29, 1999. The appellant/cross-respondent (claimant) and the respondent/cross-appellant (self-insured) stipulated that on _____, the claimant sustained a compensable injury to her right hand and wrist; that she reached maximum medical improvement on January 15, 1997, with a 38% impairment rating (IR); that she did not commute any portion of her impairment income benefits; and that the filing period for the first quarter for supplemental income benefits (SIBS) began on December 24, 1998, and ended on March 24, 1999. The hearing officer made the following findings of fact and conclusion of law:

FINDINGS OF FACT

2. The Claimant experienced significant lasting effects from the injury and is unable to return to her former employment.

3. The Claimant was unemployed, during the filing period, and did not seek any employment.

4. The Claimant was "totally unable to work" during the filing period and therefore she was not required to seek employment.

5. The Claimant's "total inability to work" has been caused, in large measure, by her rheumatoid arthritis and cerebrovascular accident (stroke) which are not work related.

6. The Claimant would have some ability to work and an obligation to seek employment, if not for her non-work related conditions.

7. The Claimant's unemployment is not a direct result of the impairment from her compensable injury.

8. The Claimant made a good faith effort to obtain employment commensurate with her ability, since she had no ability to work.

CONCLUSION OF LAW

1. The Claimant is not entitled to [SIBS] for the first compensable quarter.

The claimant appealed Findings of Fact Nos. 5, 6, and 7 and Conclusion of Law No. 1; contended that the hearing officer improperly placed the burden on her to prove that her condition was caused solely by her compensable injury; and requested that the Appeals Panel reverse Conclusion of Law No. 1 and render a decision that she is entitled to SIBS

for the first quarter. The self-insured filed a document that is timely to be an appeal and a response to the claimant's appeal. The self-insured stated that it agreed with the ultimate disposition of the disputed issue, but that it appealed Findings of Fact Nos. 2 and 8. It contended that to satisfy the good faith requirement for entitlement to SIBS an inability to work must be as the result of the compensable injury, essentially appealing Finding of Fact No. 4. The self-insured urged that the other findings of fact and the conclusion of law are supported by sufficient evidence and should be affirmed. A response from the claimant has not been received.

DECISION

We affirm.

The claimant, who was about 60 years old at the time of her injury, had a history of rheumatoid arthritis before she was injured on _____, pushing a heavy, round clothes rack. The claimant testified that prior to the injury the arthritis did not prevent her from performing her work. On December 14, 1995, Dr. F performed surgery to repair ruptured tendons in the right hand and wrist. In a progress note dated October 23, 1996, Dr. F stated that the claimant was doing better, that she needs to work on strengthening and range of motion, and that he thinks that she will be able to return to work performing light work at the first of the year. In a report dated January 15, 1997, Dr. F said that the claimant still had quite a bit of stiffness in both hands and wrists; that she said that she cannot hold a glass of water, it is hard to comb her hair, and it is difficult to get dressed; that she does have fairly significant rheumatoid arthritis in both hands, which along with her tendon ruptures, is giving her quite a bit of problems; that she does have significant impairment due to loss of motion secondary to the tendon ruptures and arthritis; that she has a 56% impairment of the right upper extremity and a 36% impairment of the left upper extremity that result in a 72% impairment of the upper extremities and a 43% whole person IR; that the IR is high, but is justified with her significant loss of motion; that there is no work she can do at the self-insured; and that she is going to have to get retraining through the Texas Rehabilitation Commission to get a job that meets her restrictions. Dr. B, the designated doctor, in a report dated May 28, 1997, stated that the claimant injured her left wrist and hand in an unrelated incident after the _____, injury; that she had a history of rheumatoid arthritis; that he did not consider the left upper extremity in assigning an IR; and that he assigned a 63% impairment of the right upper extremity that converted into a 38% IR.

The claimant was admitted to a hospital on June 2, 1998, and was discharged to a nursing home on June 9, 1998. Dr. KM, the physician who treated her, diagnosed a stroke with significant left upper extremity flaccid paralysis and left lower extremity partial paralysis; severe rheumatoid arthritis; chronic obstructive pulmonary disease; and chronic anxiety. In a letter dated May 11, 1999, Dr. KM stated that the claimant had severe rheumatoid arthritis, had a stroke, and was injured working for the self-insured; that she was unable to move her fingers and arms to carry out productive functions; and that she could not perform work at all. In another letter, with an apparent error concerning the date, Dr. KM said that the claimant had been unable to work from December 1998 to April 1999

Dr. GM performed an independent medical examination at the request of the self-insured and in a report dated May 26, 1999, diagnosed advanced rheumatoid arthritis of both hands; post-operative status following extensor tendon rupture, multiple tendons, right hand and wrist; post-operative status following tendon transfer for extensor rupture, left index finger; and one year post left side cerebrovascular accident with some residual weakness, left arm and left leg. In that report Dr. GM responded to a question concerning her capabilities if she had not had the stroke, and said that she could work in a very sedentary-type job. He also said that the rheumatoid arthritis is not related to the injury, but that the injury could have aggravated the arthritis. Dr. GM concluded that the claimant is totally unemployable and should not be considered for employment because of her multiple medical problems. In a letter to the attorney representing the claimant dated May 28, 1999, Dr. JB said that the claimant was completely disabled from any type of work due to her severe rheumatoid arthritis as well as the recent cerebrovascular accident.

In Texas Workers' Compensation Commission Appeal No. 980773, decided May 22, 1998, the Appeals Panel stated that the hearing officer should consider the claimant's overall medical condition in determining whether the claimant had the ability to work during the filing period and that that determination required the evaluation of both the restrictions related to the claimant's compensable injury and the claimant's other health problems. The Appeals Panel also said that the appropriate place to consider the effects of the claimant's other health problems in a determination of SIBS entitlement is in the analysis of the direct result criterion. In the case before us, the hearing officer did not commit error in considering the claimant's overall medical condition in determining that the claimant was totally unable to work during the filing period.

Concerning the direct result criterion, the hearing officer found that the claimant experienced significant lasting effects from the injury and was unable to return to her former employment. In Texas Workers' Compensation Commission Appeal No. 981878, decided September 18, 1998, the Appeals Panel stated:

> . . . . we have not held that an inability to return to a "preinjury occupation," per force, proves the direct result requirement. See Texas Workers' Compensation Commission Appeal No. 960165, decided March 7, 1996, for a discussion of cases concerning direct result. While the inability to return to a "preinjury occupation" may well be a significant factor in a given case in determining direct result, standing alone it does not prove direct result to the exclusion of any other evidence on the issue.

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). In Finding of Fact No. 7 the hearing officer found that "[t]he Claimant's unemployment is not a direct result of the impairment from her compensable injury." (Emphasis added.) There is no indication that the hearing officer placed the burden on the claimant to prove that the impairment from the compensable injury was the sole cause of her unemployment. That a different determination concerning the direct result criterion

could have been made based on the same evidence is not a sufficient basis to overturn the determination made by the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Findings of Fact Nos. 2, 4, and 8 appealed by the self-insured and Findings of Fact Nos. 5, 6, and 7 and Conclusion of Law No. 1 appealed by the claimant 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 appealed 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:

_____
Thomas A. Knapp
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge