APPEAL NO. 991602

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 1, 1999, a contested case hearing was held. The issue concerned the entitlement of the respondent, who is the claimant, to his second quarter of supplemental income benefits (SIBS).

The hearing officer determined that the claimant was entitled to SIBS. He held that the claimant made a good faith effort to find work commensurate with his ability, which he found was limited by the medication he took. He further found that the claimant's unemployment was the direct result of his impairment.

The appellant (carrier) has appealed. The carrier argues that the claimant took the position that he had the complete inability to work, which was not proven. It argues that a finding that the claimant had only a minimal ability to work is reversible error because it indicates an erroneous position of the hearing officer that the job search need only have been minimal. The carrier finally argues that a mere 12 contacts with prospective employers should not constitute good faith. The carrier argues that there was no true cooperation with the Texas Rehabilitation Commission (TRC). The carrier argues facts that it believes support its position. The claimant responds that the decision should be affirmed.

DECISION

We affirm.

The filing period for the quarter in issue ran from December 3, 1998, through March 3, 1999. The claimant, who said he had done heavy work all his life, injured his back on _____, while employed by (employer). He had surgery involving implantation of "cages" in his spine. The claimant had a spinal stimulator and took medication, for pain relief. He said he was unable to sit for more than about 30 minutes pain-free (45 minutes maximum), could not stand for more than 30 minutes without pain, and was unable to walk very far without pain. The claimant said he had attended school through 12th grade and could not read or write, even though he would review the newspaper in looking for want ads.

The claimant said that he had contacted TRC, but they closed a file on him when his doctor filed a statement saying he could not work. A letter from TRC indicates that the file was closed due to unfavorable medical prognosis. He had not sought employment through the Texas Workforce Commission. The claimant said he had looked for full and part-time work, but there were few part-time jobs in the town of 75,000 where he lived. The claimant was treated by Dr. R and Dr. D and said he saw each of them about once every three months.

Various job contacts (about a dozen) are listed on the claimant's Statement of Employment Status (TWCC-52). The claimant estimated that each contact used an hour

and one half of his time. A functional capacity evaluation completed by Dr. D stated that the claimant could not climb stairs or other objects, and could stand, sit, and walk no more than one to two hours at a time. He was limited to 10 pounds lifting. The hearing officer's decision denying SIBS for the first quarter is in evidence; the restrictions that decision recited allowed for more functioning than the current restrictions.

A vocational assessment completed by TRC in January 1999 found a number of functional weaknesses, including the ability to fill out a job application well. The assessment noted that he was in special education in high school and had a history of a learning disability. The assessment found that the claimant's reading and writing skills were within the level of first grade.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). While another finder of fact could have drawn different inferences, we cannot agree that the decision reached by this hearing officer is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. The claimant's performance appears to have undergone greater restrictions since the first quarter and it appears that the jobs he may be capable of performing that are commensurate with all his abilities may be few. The hearing officer could hold that the search that was conducted was sufficient for this quarter. We would note that the new rules which will be in effect for the remainder of the claimant's potential SIBS periods will impact analysis of future job-seeking efforts.

We affirm the decision and order of the hearing officer.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge