APPEAL NO. 991827

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 July 29, 1999. The issues before the hearing officer were whether the appellant (claimant) is entitled to supplemental income benefits (SIBS) for the first, second, and third quarters. It is undisputed that the claimant sustained a compensable injury on _____; that she has an impairment rating (IR) of 15% or greater; that she commuted no portion of her impairment income benefits; that the first quarter for SIBS began on December 15, 1998, and ended on March 15, 1999; that the second quarter began on March 16, 1999, and ended on June 14, 1999; and that the third quarter began on June 15, 1999, and ended on September 13, 1999. The hearing officer determined that during the filing periods for the first three quarters the claimant had some ability to work, made no search for employment, and did not in good faith seek employment commensurate with her ability to work. She also determined that during those filing periods the claimant's unemployment was not a direct result of the impairment from the compensable injury and that she is not entitled to SIBS for the first, second, and third quarters. The claimant appealed, stated that the decision of the hearing officer is wrong, and requested that it be reversed. The respondent (self-insured) replied, urged that the evidence is sufficient to support the decision, and requested that it be affirmed.

DECISION

We affirm.

The claimant contended that during the filing periods for the first three quarters for SIBS she had no ability to work because of the extreme pain she had. She testified that she was injured when she was driving a school bus and twice steered the bus into different lanes to avoid a car that was turning, that she drove the bus to the school and drove on another route that day, that she had severe pain in her neck, that she went to an emergency room the next day, that she still had severe neck pain, that she had an injection that helped for a while, and that she takes medication. The claimant testified that during the filing periods for the first and second quarters she did not seek employment, that during the filing period for the third quarter she sought employment with six employers, even though she had too much pain to work, that her mother took her to places to look for work, and that she did not look in newspapers for places that were hiring people. She introduced a letter from Dr. K, a chiropractor, dated November 9, 1998, that states:

> Due to the fact that [claimant] received a 20% IR for her injuries coupled with the fact that this individual has been under continuous psychiatric care over the last year and half, it appears that this individual has been and will continue to be unable to be gainfully employed as result of her injuries of _____. Therefore, I believe that she should be considered for [SIBS] under TWCC [Texas Workers' Compensation Commission] guidelines. (See attachments.)

The record does not contain any attachments. A Benefit Dispute Agreement (TWCC-24) dated September 28, 1998, indicates that the parties agreed that the claimant's psychological condition is not the result of the _____, injury. A report of a functional capacity evaluation dated April 22, 1999, states that it was difficult to determine an accurate work status for the claimant because of multiple complaints and inconsistencies noted throughout the testing; that multiple inconsistencies indicated a lack of maximum effort; and that during the testing the claimant demonstrated the ability to perform work at a sedentary level.

In Texas Workers' Compensation Commission Appeal No. 931147, decided February 3, 1994, the Appeals Panel stated that if a claimant established that he or she had no ability to work at all during the filing period in question, then seeking employment in good faith commensurate with this inability to work would be not to seek work at all. In Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994, we emphasized that the burden of establishing no ability to work is firmly on the claimant and 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 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. 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.

Concerning the issue of whether the claimant's unemployment was the direct result of the impairment from the compensable injury, in Texas Workers' Compensation Commission Appeal No. 981878, decided September 18, 1998, the Appeals Panel wrote:

> While the Appeals Panel has stated that there was evidence sufficient to uphold a hearing officer's implicit determination on direct result where the evidence shows the "claimant suffered a serious injury with lasting effects and that he could not reasonably perform the type of work that he was doing at the time of injury" (Texas Workers' Compensation Commission Appeal No.

> 93559, decided August 20, 1993), 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.

As the self-insured pointed out in closing argument, the "old" SIBS rules applied to the filing periods for the first two quarters and the "new" SIBS rules applied to the filing period for the third quarter. 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). The hearing officer's determinations that during the filing periods for the first three quarters the claimant had some ability to work 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). The claimant did not seek employment during filing periods for the first and second quarters, and the determinations that during those filing periods the claimant did not in good faith seek employment commensurate with her ability to work are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Concerning the filing period for the third quarter, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(e) (Rule 130.102(e)), the rule that applies to that filing period, provides that a claimant who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document the job search efforts. The Statement of Employment Status (TWCC-52) for the third quarter filed by the claimant indicates that she sought employment with six prospective employers on four days during the filing period. In Finding of Fact No. 19, the hearing officer determined that the claimant made no search for employment during the filing period for the third quarter. We reform that finding of fact to state that during that filing period the claimant sought employment on four days with a total of six prospective employers. The determination that during the qualifying period for the third quarter the claimant did not in good faith seek employment commensurate with her ability to work is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. The hearing officer considered the claimant's psychological condition in making her determinations concerning the direct result criterion. Her determinations that during the filing periods for the first three quarters the claimant's unemployment was not a direct result of the impairment from the compensable injury are

not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Either the affirmed determinations concerning the good faith criterion or the direct result criterion are sufficient to support the determinations that the claimant is not entitled to SIBS for the first, second, and third quarters.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge