APPEAL NO. 991880

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 30, 1999, a contested case hearing (CCH) was held. The issue concerned the entitlement of the appellant, who is the claimant, to the first through eighth quarters of supplemental income benefits (SIBS).

The hearing officer determined that the claimant was not entitled to SIBS for any of the quarters in issue. She found that he had some ability to work but failed to make a good faith search for employment commensurate with this ability. She did find that his unemployment was the direct result of his impairment.

The claimant has appealed. He argues that he was unable to work and that he is entitled to SIBS. He also appeals the conclusion of law finding venue proper in the office. The carrier responds that venue was stipulated and that the decision of the hearing officer is otherwise correct on the entitlement to SIBS.

DECISION

We affirm.

At the beginning of the CCH, the hearing officer asked both parties if a stipulation could be made as to venue and asked the claimant if he lived within 75 miles of the office at the time of his injury. He responded that he did, and the parties stipulated that venue was proper in that office.

The claimant had worked for 35 years for the (employer). On _____, he was on top of a machine, cleaning it, when his safety goggles became foggy. He lost his balance and slipped into a hole in the middle of the machine. He did not fall all the way in, but did hurt his left knee and his lower back. The claimant said that he had left knee surgery in 1996. He had been recommended and approved through the second opinion process for back surgery, but said that his fiancee had the same type of surgery and it had not been successful, so he would reserve surgery until he was unable to get up out of his bed.

The claimant's treating doctor was Dr. D. The claimant had seen Dr. D for his own treatment in July 1997, and then once six months prior to the CCH. The claimant said that he was unable to work at all due to "pain" in his back and knee. He took both prescription and over-the-counter medications for pain. The claimant said he had not worked in two years and lived on the income from investments.

The claimant had seen Dr. X, a doctor for the carrier, in May 1996 and Dr. X recommended that he could work light duty. The claimant said he had not discussed this recommendation with Dr. D, although he had been aware of it two weeks after Dr. X's examination. The claimant contended the adjustor had told him he would get nothing more after his impairment income benefits were paid, and that he consequently knew nothing

about SIBS until he got a refusal for the second quarter. He then placed applications for the first eight quarters of SIBS. He had not made any attempts to look for work. The eighth quarter covered the time period from October 21, 1997, through October 18, 1999.

Dr. X's report was primarily an impairment rating evaluation that the claimant disputed, and which led to appointment of a designated doctor. Dr. X noted that the claimant had a lumbar herniation at L4-5. At the end of his narrative, he commented that the claimant could work light duty, with no lifting over 30 pounds and no excessive bending or squatting. The claimant said Dr. D had not released him to any work, fearing that he could reinjure himself. Dr. D completed a check mark area on a work release on June 1, 1999, stating that the claimant could not work.

The claimant has not stated why he believes that venue was not proper in the office. Because he asserted at the CCH that this was the proper place and that he lived within 75 miles of the office on his date of injury, we cannot agree that there was error in the conclusion that venue was proper in (city).

The legislature has imposed upon applicants for SIBS the requirement that they search for work commensurate with their ability to work. This serves the objective of SIBS as a "bridge" benefit to support a reentry to employment. In Texas Workers' Compensation Commission Appeal No. 931147, decided February 3, 1994, the Appeals Panel stated that if an employee established that he or she has no ability to work at all, then seeking employment in good faith commensurate with this inability to work "would be not to seek work at all." Under these circumstances, a good faith job search is "equivalent to no job search at all." Texas Workers' Compensation Commission Appeal No. 950581, decided May 30, 1995.

However, it is important not to overread this decision, and we have thus held that the burden of establishing no ability to work at all is "firmly on the claimant," Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994, and that a finding of no ability to work must be based on medical evidence. Texas Workers' Compensation Commission Appeal No. 950173, decided March 17, 1995. *See also* Texas Workers' Compensation Commission Appeal No. 941332, decided November 17, 1994. A claimed inability to work is to be "judged against employment generally, not just the previous job where injury occurred." Texas Workers' Compensation Commission Appeal No. 941334, decided November 18, 1994. Whether the claimant has no ability to work at all is essentially a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 941154, decided October 10, 1994.

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). The hearing officer could believe that the

claimant had some ability to work, even if limited, and thus the failure to look at all for work did not constitute good faith under all the circumstances.

We affirm the decision and order of the hearing officer.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Judy L. Stephens
Appeals Judge