APPEAL NO. 992662

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 October 27, 1999. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on February 17, 1998, with a 17% impairment rating; and that the qualifying period for the third quarter for supplemental income benefits (SIBS) began on April 28, 1999, and ended on July 27, 1999. The hearing officer found that during the qualifying period the claimant had some ability to work, made no job searches, and did not make a good faith effort to seek employment commensurate with his ability to work and concluded that the claimant is not entitled to SIBS for the third quarter. The claimant appealed; urged that those determinations, other than the one that he did not look for work during the qualifying period, are so against the great weight and preponderance of the evidence as to be manifestly unjust; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to SIBS for the third quarter. The carrier responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified that he injured his ribs, back, neck, shoulders, and head when he was caught between two mobile homes at work. He said that during the qualifying period for SIBS for the third quarter he did not look for work because he had not been released to return to work by his doctor.

In a note dated April 8, 1999, Dr. M said that the claimant complained of cervical and lumbar pain and headaches, that examination revealed cervical and lumbar tenderness and spasm to palpation, that Vanadom #40 was prescribed and that the claimant could not return to work. Notes dated May 13, 1999, and July 1, 1999, contain similar comments. In a Work Status Sheet dated July 15, 1999, Dr. M marked the statement "patient **may not** return to work at this time." In a note dated the same day, Dr. M stated that the claimant had subjective complaints of continued cervical and lumbar pain, headaches, and insomnia; that there was cervical tenderness to palpation; that spasms were noted; that there was radiculopathy into the shoulders; that lumbar examination revealed tenderness and spasms to palpation; that a prescription for Vanadom #40 was written; that the claimant will be referred to Dr. B, a neurologist; that conservative treatment will be continued; and that the claimant cannot return to work. In a letter dated August 6, 1999, Dr. M wrote:

> [Claimant] is unable to work in any capacity from May 12, 1999 through August 10, 1999. The patient is under medical treatment for injuries sustained in a work related accident that occurred on _____.

> Due to his injuries, the patient has had consistent and unrelenting cervical and lumbar pain. This pain radiates into his shoulders bilaterally. The patient also has continued headaches and insomnia. Due to these symptoms and the patient's inability to lift, pull, push, or sit, stand, or stoop for extended periods of time, the patient has remained off work at my direction since he has been in treatment with me.

The SIBS rules that became effective January 31, 1999, apply to the issues before us. 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. That has not been changed by the SIBS rules that apply to this case. 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. Medical evidence is not required to support a determination that a claimant had some ability to work. Texas Workers' Compensation Commission Appeal No. 980879, decided June 15, 1998. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)) provides that in a case of no ability to work the claimant must provide a narrative report from a doctor which specifically explains how the injury causes a total inability to work.

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). Her determinations that were 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 hers. 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:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Philip F. O'Neill
Appeals Judge