APPEAL NO. 000473

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 14, 2000, a hearing was held. The hearing officer determined that appellant's (claimant) impairment rating (IR) is 17%, but that claimant is not entitled to supplemental income benefits for the first through fifth compensable quarters. Claimant asserts that the hearing officer erred in those findings of fact that were against her, citing medical evidence, including the testimony of Dr. P. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) when, she said, her back was injured on _____, after she had moved some boxes. The designated doctor, Dr. B, evaluated claimant on October 1, 1997, and found maximum medical improvement was reached on August 29, 1997, with a 13% IR. In August 1999, Dr. B provided another report in which he said that the Texas Workers' Compensation Commission (Commission) had determined that claimant's depression should be part of her injury; he referred to a "rating" by Dr. M of five percent for psychological problems and issued a new total IR of 17%. In his most recent report, Dr. B commented that this was the first request he has had in nine years to assign an impairment for a "psychological disorder based on a back injury." He pointed out that the majority of claimants with longstanding back injuries will experience some "symptoms consistent with depression." He asked if he should in the future have all such patients "assessed by a psychologist" at the time IR is considered. The hearing officer gave presumptive weight to Dr. B's latter IR of 17%, but, in doing so, she did not indicate that she was compelled to accept the designated doctor's more recent report as compared to his earlier report. The carrier did not appeal the determination of IR.

Claimant did not attempt to obtain any work during the filing/qualifying periods of the five quarters in issue. The parties stipulated that no benefits were commuted; that the first quarter began on August 22, 1998, and that the filing period for that quarter began on May 24, 1998; that the fourth quarter began on May 22, 1999, and that the qualifying period for that quarter began on February 6, 1999; and that the fifth quarter began on August 21, 1999, and the qualifying period for that quarter began on May 8, 1999. The hearing officer addressed the fact that the first three quarters were governed by pre-1999 rules, while the latter two quarters were governed by the 1999 rules. The hearing officer's comments about evidence, Commission rules, and issues throughout her Statement of Evidence could serve as a model of clarity and thoroughness. (While the hearing officer accurately states that the Appeals Panel under old rules said that medical evidence must be more than conclusory, the Appeals Panel also said that the hearing officer, as fact finder, determined the weight to give medical evidence in deciding whether an inability to work was shown; the total Statement of Evidence shows no reversible error concerning her determination under

old rules, and the 1999 rules make it clear that conclusory opinions will not suffice under the "specifically explain" criterion.)

Dr. P provided a statement dated November 11, 1999, in which he said that claimant has "traumatic lumbar discogenic pain syndrome and chronic pain." He added:

> She has been under the care of this office since January 17, 1997, and she has not been able to return to work. She remains totally disabled to this day due to orthopedic reasons or work-related depression that was not treated at a necessary time. Thank you. . . .

The only other record submitted by claimant from Dr. P was a work note. The hearing officer's comment that Dr. P's reports do not "specifically explain" why claimant could do no work because of her injury (*see* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)) is clearly sufficiently supported by the evidence.

Dr. P testified that "we" performed a functional capacity evaluation of claimant in which she was found to have a lifting limit of 20 pounds. He added that "her physical condition is light duty at the lowest level" and " [Dr. Mo] . . . documented that the depression . . . was significant enough not to allow her to work." Dr. P also said that "my findings are also based on their findings" (Dr. M and Dr. Mo), and that his opinion that claimant cannot work because of her psychological condition was based on "information that was provided . . . by the psychologists that [he had] referred her to." The hearing officer referred to the various psychological reports as not "specifically explaining" how the claimant is unable to work, saying that they do not address ability to work.

Dr. Mo provided a lengthy report in 1997 but she only said that the Minnesota Multiphasic Personality Inventory showed "a reduced level of psychological functioning"; she also wrote that "claimant reported" pain and "a great deal of interference in her life"; Dr. Mo also said claimant "reported" high levels of affective distress"; claimant was also said to have "indicated that she receives punishing responses from others." Dr. Mo then said that claimant was "well oriented," her memory "seemed intact" and she has "fair judgment and some insight." Dr. Mo recommended therapy but did not address work one way or the other.

Dr. M provided reports in March and May 1999. In March he said that claimant was "making significant progress" and that "a change has been made in her severity level of depression, which . . . reflects the progress. . . ." He also said "sessions" could be reduced and said that "these sessions . . . [address] her pain management needs, [support] her return to work. . . ." In May 1999 Dr. M said that claimant has a five percent IR for psychological problems, which he said, "relfects the judgment of progress that she has made, her capacity to continue to make progress and the problems she reveals. . . ." Dr. M only addressed work in the manner quoted above. The hearing officer was sufficiently supported by the evidence in commenting that the psychological reports do not address "the ability to work" and do not recommend that claimant "not work due to her depression."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She concluded that the medical evidence did not support a determination in any relevant period of time that claimant could do no work of any kind. Her related findings that claimant did not attempt in good faith to obtain employment commensurate with her ability reflect claimant's evidence that she did not attempt to find a job at any time and the hearing officer's findings that claimant is able to perform some work. These findings of fact are sufficiently supported by the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

CONCUR IN RESULT:

Gary L. Kilgore
Appeals Judge