APPEAL NO. 000615

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 7, 2000. The issue at the CCH was whether the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier) and the claimant stipulated that the claimant=s impairment rating is 29% and that the first quarter for SIBs began on November 14, 1999, and ended on February 12, 2000. The hearing officer determined that during the qualifying period the claimant had no ability to work and that she is entitled to SIBs for the first quarter. The carrier appealed, urged that the claimant has not established that she met the requirements of Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 130.102(d) (Rule 130.102(d)) for entitlement to SIBs, and requested that the Appeals Panel reverse the hearing officer=s decision and render a decision in its favor. There is no response from the claimant in the appeal file.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence, including summaries of medical reports. Briefly, a physical therapist conducted a functional capacity evaluation (FCE) on October 13, 1999, and reported that the claimant could perform between the sedentary and light-duty categories. On October 29, 1999, Dr. F, the claimant=s treating doctor, agreed with the report of the FCE. On November 9, 1999, Dr. D, the neurosurgeon treating the claimant, gave a history of the treatment of the claimant, commented on her condition, and opined that she is disabled and unable to work. Both Dr. F and the physical therapist wrote letters stating that they agreed with Dr. D that the claimant could not work.

Rule 130.102(d), effective January 31, 1999, provides in part:

> Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee=s ability to work if the employee:
>
> * * * * *
>
> (3) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or . . . .

The hearing officer made a finding of fact that during the qualifying period the claimant had no ability to work. In the statement of the evidence in her Decision and Order the hearing officer wrote:

> Claimant asserts that she had no ability to work during the qualifying period for the first quarter. That assertion is supported by the narrative report from her treating neurosurgeon, [Dr. D]. [Dr. D=s] letter of November 9, 1999, shows that Claimant had an inability to work during the first quarter qualifying period, and explained how the injury caused the total inability to work. Finally, the October 13, 1999 FCE and October 29, 1999 form filled out by [Dr. F], do not constitute records which shows [sic] that Claimant can return to work. Those reports are not credible in light of the fact that both the physical therapist and [Dr. F], changed their minds regarding Claimant=s ability to work, after consulting with [Dr. D], the neurosurgeon who treated Claimant for her injury.

It is preferable for hearing officers to make findings of fact on each of the three elements in Rule 130.102(d). The hearing officer made a finding of fact on the first element and findings of fact on the other two elements may be inferred or implied from her statement of the evidence.

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 explicit and implicit determinations of the hearing officer 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).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge