APPEAL NO. 000664

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 6, 2000. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable low back injury on _____; that he reached maximum medical improvement on November 24, 1998, with an 18% impairment rating as certified by the designated doctor; and that the qualifying period for the first quarter for supplemental income benefits (SIBs) was from August 26, 1999, through November 24, 1999. The hearing officer determined that the claimant=s unemployment during the qualifying period was the direct result of his impairment from the compensable injury. That determination has not been appealed and has become final. The hearing officer also found that during the qualifying period the claimant had some ability to work, did not seek employment during each week of the qualifying period, and did not in good faith seek employment during the qualifying period and concluded that the claimant is not entitled to SIBs for the first quarter. The claimant appealed those determinations, stated information favorable to his position, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The carrier responded, stated that information provided by the claimant for the first time on appeal should not be considered, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

In rendering this decision we will consider the record developed at the CCH and will not consider information presented for the first time on appeal.

On April 16, 1999, the Texas Workers= Compensation Commission approved the claimant=s request for spinal surgery. The approval is valid for one year after it was issued. The claimant testified that he had delayed the surgery because his father who lives in another state is being treated for cancer; that he travels to see his father when he can get someone to take him; and that the surgery is scheduled for April 7, 2000.

In a letter dated January 25, 2000, Dr. D, the claimant=s treating doctor, stated that the claimant was diagnosed with disc herniations at L2-3 and L4-5 and lumbar instability; that Dr. B evaluated the claimant on October 13, 1999, and December 15, 1999, and based on those examinations the claimant was not able to work because of nerve and disc injuries; that the claimant was unable to work from October 13, 1999, through December 15, 1999, because of severe pain to his back and evidence of neurological injury to the lumbar spine; and that the claimant is scheduled for major lumbar spine surgery. Dr. C was the carrier=s choice of second opinion spinal surgery doctor. In a letter dated February 18, 1999, he stated that the claimant had signs and symptoms of degenerative disc disease and restricted motion in his back; that there was no evidence of neurological dysfunction whatsoever; that the claimant=s

stenosis was minimal and his motivation appeared to be poor; that he appeared to be fit for duty, but there is no guarantee that he would not be reinjured if he returned to work; and that he did not think surgical intervention was indicated.

The Application for [SIBs] (TWCC-52) indicates that the claimant began looking for work on October 22, 1999, and sought work with 20 potential employers. The claimant testified that he began looking for work then because the attorney representing him advised him that he had to do so.

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 requirements for eligibility for SIBs are set forth in Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 130.102. There is no indication that the hearing officer did not properly apply the provisions of that rule to the facts. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The appealed 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:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge