APPEAL NO. 001167

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 9, 2000. The appellant (claimant) and the respondent (carrier) stipulated that the qualifying period for the eighth quarter for supplemental income benefits (SIBs) began on November 14, 1999, and ended on February 12, 2000; that during the qualifying period the claimant did not work and did not earn any wages; and that during the qualifying period she did not make any job searches. The hearing officer determined that during the qualifying period the claimant's unemployment was a direct result of the impairment from the compensable injury. That determination has not been appealed and has become final under the provisions of Section 410.169. The hearing officer found that during the qualifying period the claimant had some ability to work and failed to make a good faith effort to obtain employment commensurate with her ability to work and concluded that the claimant is not entitled to SIBs for the eighth quarter. The claimant appealed; urged that a November 1999 letter of Dr. O, who examined the claimant at the request of the carrier, is not entitled to any weight and should be stricken in its entirety; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she is entitled to SIBs for the eighth quarter. The carrier responded; urged that the evidence is sufficient to support the determinations of the hearing officer that the claimant did not meet the criteria of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3)(Rule 130.102(d)(3)) to be entitled to SIBs for the eighth quarter; and requested that the Appeals Panel affirm the decision of the hearing officer.

DECISION

We affirm.

In the statement of the evidence in her Decision and Order, the hearing officer set forth the provisions of Rule 130.102(d)(3) and summarized and quoted from medical reports of Dr. H, the claimant's treating doctor, and Dr. O. Briefly, under the provisions of Rule 130.102(d)(3) a claimant may satisfy the requirement in Sections 408.142 and 408.143 to attempt in good faith to obtain employment commensurate with the ability to work by proving that he or she 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.

In a letter dated March 10, 1998, Dr. O reported that the claimant had right shoulder surgery, cervical fusion, and reflex sympathetic dystrophy (RSD); that she was unable to perform a complete functional capacity evaluation because of elevation of heart rate; that due to her obesity and use of her left upper extremity for simple activities of daily living, she developed AC joint problems in the left upper extremity; and that she is unable to function in the workplace. In a letter dated February 22, 1999, Dr. O stated that the claimant had fewer signs of RSD; that results on hand tests revealed that the claimant would not be able

to get out of bed, dress herself, or carry her purse; that even though the Fourth Edition of the Medical Association Guides (AMA) are not used to determine impairment ratings, information in the Fourth Edition indicates that the claimant was not giving maximum effort; and that because he was not getting valid information, he could not comment further on what type of function she could perform. In a letter dated November 23, 1999, Dr. O stated that the claimant no longer had most of the signs of RSD; that the claimant stopped the three-minute step test after taking four steps; that the provisions of the Fourth Edition of the AMA Guides indicate that the claimant was not giving maximum effort; that based upon the results of the test, she would not be able to get out of bed, get dressed, drive, or come to the office; and that in his opinion psychological issues were present. In a letter dated September 8, 1999, Dr. H said that the claimant had been under his care since December 20, 1995, and that she was diagnosed with bilateral upper extremity RSD, herniated C6-7 disc with post anterior disectomy, and depression; referred to the March 1998 and February 1999 reports of Dr. O; and stated that "[RSD] is a very painful disease and combined with [claimant's] severe cervical pain it is my professional opinion that **[claimant] is totally and permanently disabled.**" (Emphasis in original)

The claimant contended that a letter of Dr. O should be disregarded because he referred to the Fourth Edition of the AMA Guides. Dr. O stated that the Fourth Edition of the AMA Guides is not used in Texas to determine impairment ratings, but that he used provisions in that edition to help determine that the claimant did not put forth maximum effort during testing. That is not a basis for the hearing officer to have to disregard information in the letter of Dr. O. We will not strike the letter of Dr. O as requested by the claimant.

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, determines 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 finding of the hearing officer that during the qualifying period the claimant had some ability to work and failed to make a good faith effort to obtain employment commensurate with her ability to work and her conclusion that the claimant is not entitled to SIBs for the eighth quarter 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 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:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge