APPEAL NO. 001288

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 17, 2000. The appellant (carrier) and the respondent (claimant) stipulated that the qualifying period for the 13th quarter for supplemental income benefits (SIBs) began on October 21, 1999, and ended on January 3, 2000. The hearing officer found that during the qualifying period the claimant's underemployment was a direct result of her impairment from the compensable injury and that she established good faith by her actual return to work and concluded that the claimant is entitled to SIBs for the 13th quarter. The carrier appealed, urged that the determinations of the hearing officer are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBs for the 13th quarter. A response from the claimant has not been received.

DECISION

We affirm.

The Decision and Order of the hearing officer includes a statement of the evidence and quotations from Section 408.142(a) setting forth the requirements for entitlement to SIBs and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) concerning good faith effort to obtain employment commensurate with the ability to work. Some of the testimony of the claimant and documents in evidence lack specificity. For example, documents do not establish the first date the claimant worked in the qualifying period for the quarter and entries in the spaces under "week ending" on the Application for [SIBs] (TWCC-52) indicate periods ranging from 2 to 14 days. It appears that the claimant began working on the 11th day after the start of the qualifying period. She testified that she worked four hours a day, that she was paid $5.25 per hour while working for the first employer, that she was paid $5.15 per hour while working for the second employer, and that she did not work for both employers on any one day.

In a letter dated January 12, 1999, Dr. A, the claimant's treating doctor, said that the claimant was in a light-duty work status and should not work more than 25 hours a week. In a report dated December 6, 1999, Dr. A does not state the hours the claimant may work, but does state "[s]he is attempting to work at a very light duty paper-work job four hours a day." At the request of the carrier, Dr. C examined the claimant. In a letter dated October 1, 1999, Dr. C opined that the claimant's compensable injury had long ago resolved; that she should have a functional capacity evaluation (FCE); and that absent an FCE, she could return to her original job without any significant difficulty other than those that might be in the psychosocial/psychoemotional area. A summary of an FCE dated December 3, 1999, indicates that the claimant has a 12-pound lifting strength, states that her Oswestry score that includes daily living activities indicates she is in the severe disability category, and does not mention the hours that she could 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). 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 hearing officer made two findings of fact, that during the qualifying period the claimant's underemployment was a direct result of her impairment and that she established good faith by her actual return to employment. It would have been better had she made additional findings of fact; however, additional findings of fact may be inferred from comments in the statement of the evidence. They indicate that the hearing officer believed that the claimant could not return to the employment at which she was injured, could not work at a full-time job, and that she returned to work in a position which is relatively equal to her ability to work. *See* Texas Workers' Compensation Commission Appeal No. 992668, decided January 13, 2000, and Texas Workers' Compensation Commission Appeal No. 001062, decided June 29, 2000, concerning Rule 130.102(d), return to work in a position which is relatively equal to the injured employee's ability to work, and part-time work. The explicit and implied determinations 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 explicit and implied 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:

Alan C. Ernst
Appeals Judge

Susan M. Kelley
Appeals Judge