APPEAL NO. 001310

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 18, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the ninth quarter, from February 16, 2000, through May 16, 2000. The appellant (carrier) appealed; contended that the claimant did not satisfy several of the requirements in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) to establish a good faith effort to find employment, sought jobs outside his restrictions, and did not attach any applications or resumes which document his job search efforts; urged that the claimant's unemployment is not a direct result of his impairment from the compensable injury; 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 ninth quarter. The claimant responded; cited several Appeals Panel decisions; stated that even though the hearing officer made only one finding of fact concerning good faith effort to obtain employment commensurate with his ability to work, the statement of the evidence in the Decision and Order indicates that the hearing officer made additional determinations; contended that the hearing officer correctly applied the provisions of Rule 130.102(e); urged that the evidence is sufficient to support the decision of the hearing officer; and requested that it be affirmed.

DECISION

We affirm.

Since the Decision and Order of the hearing officer contains a statement of the evidence, only a brief summary of the evidence will be included in this decision. The claimant worked as a maintenance welder when he was injured. His back and hip injury has resulted in a 24% impairment rating. Dr. KG, the claimant's treating doctor, in a report dated December 11, 1998, said that the claimant cannot sit, stand, push, pull, bend, or carry; that he has a sitting tolerance of less than 15 minutes; that he has limitations on sitting, bending, squatting, kneeling, and reaching above the shoulder level; that the claimant cannot lift more than 10 pounds except on an occasional basis; and that in his, Dr. KG's, opinion, the claimant is not qualified for any form of gainful employment and is permanently disabled. In a report dated November 23, 1999, Dr. KG stated that the claimant is still totally disabled. Dr. MGG examined the claimant at the request of the carrier. In a letter dated May 12, 1998, Dr. MGG stated that the claimant could return to work in a sedentary capacity; that he could work an eight-hour shift with no lifting over 20 pounds and no stooping, bending, squatting, or repetitive movement of the low back or hip; that the restrictions are permanent; and that he would not be able to perform the duties of a welder or a mechanic. The Appeals Panel has held that a determination that the claimant's unemployment was a direct result of the impairment from the compensable injury was sufficiently supported by evidence of a serious injury with lasting effects and evidence that the claimant could not reasonably perform the work he was doing at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided

February 15, 1996. In the case before us, the evidence is sufficient to support the determination that the claimant's unemployment is a direct result of his impairment from the compensable injury.

The claimant did not contend that he has no ability to work. During the qualifying period, he sought employment 57 times in the small town in which he resides and in cities of about 30,000 people about 15 and 25 miles from his residence. The claimant testified that, when he sought employment, the prospective employers saw that something was wrong with him and would ask what he was looking for. He said that he would tell them that he was looking for light or sedentary work, would show them the restrictions in a report from Dr. R, that he did not show them a medical report that said that he could not work, that he was not given any applications to complete, and that he was not offered a job. He explained that an insurance policy provided that an insurance company would make his car payments if he was disabled, that the insurance company sent him to Dr. R, and that Dr. R listed his restrictions. In a letter dated March 26, 1998, Dr. R answered questions by stating that the claimant could sit or stand for probably three or four hours in an eight-hour day; that he could probably not sit or stand more than one to one and one-half hours at a time without periods of lying down; that he could lift 20 pounds occasionally and 10 or 15 pounds frequently; that he could occasionally reach above his shoulder level; that he would not tolerate bending, stooping, squatting, crawling, or kneeling to any degree; that employment would be quite difficult; and that he doubted that the claimant would be suitable for any occupation except a very specifically designed situation just for him.

In Texas Workers' Compensation Commission Appeal No. 000640, decided May 10, 2000, the Appeals Panel held that the requirement to document a job search was met by listing on the Application for [SIBs] (TWCC-52) the employers contacted. In the case before us, the claimant documented his search by listing 57 job contacts on the TWCC-52.

In Texas Workers' Compensation Commission Appeal No. 992810, decided January 28, 2000, the Appeals Panel noted that Rule 130.102(e) states that the reviewing authority shall consider information from the injured employee, which may include, but is not limited to, things set forth in the rule and affirmed the decision of the hearing officer that the claimant was entitled to SIBs for the fifth quarter. 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. We agree that the hearing officer could have made additional findings of fact on both the direct result and good faith criteria. However, her statement of the evidence in her Decision and Order indicates that she considered the evidence and does not indicate that she did not properly apply the provisions of Rule 130.102(e). The determinations of the hearing officer that during the qualifying period the claimant attempted in good faith to obtain employment commensurate with his ability to

work and that he is entitled to SIBs for the ninth 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).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge