APPEAL NO. 001379

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 31, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter because she had not made a good faith search for employment commensurate with her ability to work. The claimant appealed generally, asserting error in each and every finding against her claim. The respondent (carrier) responded, urging affirmance.

DECISION

We affirm the hearing officer's decision.

The claimant sustained a compensable injury on _____, while employed by (employer). She said she was lifting heavy bundles repetitively, resulting in a back injury with radiating pain to her legs. She had no surgery, but had an impairment rating of 15%. The qualifying period in issue ran from October 7, 1999, through January 5, 2000.

The claimant said that she worked for two months and two weeks at a discount store as a stocker but quit on May 21, 1999, when her pain became greater and her doctor took her off work. The claimant said she has a fifth grade education and speaks primarily Spanish, although she can understand and speak English a little.

The claimant submitted an Application for Supplemental Income Benefits (TWCC-52) for the fifth quarter which showed 66 different job contact listings, at least one made each week. She said that while she placed a number of applications, she had no interviews. The claimant contended that she would have the prospective employer complete the space on her TWCC-52. It is clear from reading the original of the TWCC-52 that all the dates of the job contact listings were written in the same handwriting and with the same pen, although the claimant firmly testified that all of these dates were written by the prospective employer. She had no explanation for why three dates appeared to have been "whited out" and written over except to say she did not do it. The claimant said that she dropped off her completed job list with the assistant to her attorney. The claimant said that she asked employers to fill out the TWCC-52 so she would be able to show that she made a good faith job search.

The explanation that the claimant gave for visiting adjacent locations on different days was that she would be low on gas and could not drive around a lot. When pointed out to her that she might expend more gas this way, she said she did not think of that. The hearing officer asked her about visiting three businesses at the same location apparently on three different days. The claimant maintained that she would go from one business to another when they were at the same location and could not explain the different dates on the TWCC-52 except to say that it was the employers who filled out the dates. She later speculated that it would be due to her depression if she returned to the same address on different days.

Although the hearing officer noted the similarity of these dates, she did not also comment on the fact that some of the employer listings also seem to be in the same handwriting. The adjuster testified briefly that she contacted a few of the employers on the list and that applications were not on file or the number listed was wrong. The adjuster also said that one prospective employer who was contacted said that the employer did not deal with paper applications but applications were placed on computer. The claimant testified as to her memory that she completed a paper application. As the hearing officer also noted, there were several locations that were listed either at the same address or adjacent addresses, yet they were contacted on different dates according to the TWCC-52.

The hearing officer stated in her decision why she found that the listings on the TWCC-52 were not credible as proving that a good faith job search had been made. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even if the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. We cannot agree that the hearing officer's conclusions about the TWCC-52 and its accuracy are against the great weight and preponderance of the evidence; her decision is sufficiently supported. Accordingly, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge