APPEAL NO. 001707

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 June 30, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits for the first quarter. The appellant (carrier) appeals, arguing that the claimant applied for jobs beyond his capability. The carrier argues facts that it believes require a reversal. The claimant responded at length by reciting facts in favor of the decision.

DECISION

Affirmed.

The claimant sustained several bodily injuries from an explosion on _____, and had a 30% impairment rating. While he had a heart condition unrelated to the injury, it would not prevent him from working as a driver if he obtained a job as such. However, the claimant had been hospitalized for his heart condition at the end of 1999. He agreed that he was a candidate for a heart transplant.

The hearing officer has described in greater detail the types of positions the claimant applied for. The hearing officer felt that the claimant was able to perform lighter work and his medical restrictions were within the sedentary work level. He sought a number of jobs in each week of the filing period; he made "cold calls," responded to advertisements, followed up on referrals from the Texas Workforce Commission, and applied for part-time jobs as well as full-time positions. Some employers contacted were not hiring.

The carrier went through various jobs in its questioning of the claimant, apparently to ascertain and engage the claimant in speculating as to whether the particular job was within every one of the claimant's restrictions. The restrictions given to the claimant are in the record and there are no activities that he was recommended to do as much as 100% of the workday. Generally, the highest percentage he could perform any activity was 67% of the day, with some actions set at a much lower percentage.

The claimant said he had been refused services by the Texas Rehabilitation Commission (TRC) in 1998. He said that he had since called but was not accepted for services. He had no correspondence from the TRC since 1998 but had the name and phone number of the counselor he had spoken with since that time. The claimant had not searched for a job in a larger town about 30 miles away because he said he could not drive the amount of time to and from that a commute would require.

The essence of the carrier's argument is that different inferences should have been drawn from the evidence presented. We will decline the suggestion that we reweigh the evidence. An appeals level body is not a fact finder and does not normally pass upon

the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.- El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.- Beaumont 1993, no writ).

Good faith is a subjective concept and generally means honesty of purpose, freedom from intent to defraud, and being faithful to one's obligations. Texas Workers' Compensation Commission Appeal No. 960107, decided February 23, 1996. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. As we have stated before, a good faith search will necessarily involve some "cold calls" or yield employers who have no jobs available, or jobs that turn out to be beyond the capability of the injured worker. Texas Workers' Compensation Commission Appeal No. 950199, decided March 24, 1995. The facts merely provide information for the hearing officer to weigh and are not dispositive.

The hearing officer is the sole judge of the relevance, the 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 when 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).

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. Soto, *supra*; Volentine, *supra*.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot

agree that this is the case here and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge