APPEAL NO. 001880

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 18, 2000. The issues at the CCH were whether the claimant's _____, injury extended to her right foot fracture, and whether she was entitled to supplemental income benefits (SIBs) for the 13th quarter.

The hearing officer determined that the right foot fracture was not an extension of the claimant's back injury because there was an intervening accident, and the foot fracture did not "naturally" result from the back injury. The hearing officer further found that the claimant had not proven that she made a good faith search for employment in every week of the qualifying period under review.

The appellant (claimant) has appealed and argues that the decision of the hearing officer on both issues is against the great weight and preponderance of the evidence. The claimant points to medical evidence connecting her foot to her back injury. The respondent (self-insured) responds that the hearing officer has correctly applied the applicable SIBs rule and that the evidence supports the decision on both appealed issues.

DECISION

We affirm the hearing officer's decision.

The qualifying period for the quarter under review ran from October 22, 1999, through January 20, 2000. The claimant had injured her back on _____, while working for the self-insured. The mechanism of injury was not clear, but resulted in back surgery which resulted in problems that were corrected by a subsequent surgery. The claimant said she had been paid her first 12 quarters of SIBs under the theory that she had an inability to work. Her treating doctor was Dr. R. Dr. R released the claimant to work on September 17, 1999, with limitations on bending, stooping, or twisting, and a five-pound lifting limit.

The claimant made what appeared to be a generalized job search which, while she maintained it took place every day, did not involve many direct contacts with prospective employers. The claimant said she looked in the newspaper, posted her resume on the Internet, called some companies, sent in her resume, and contacted a few companies when she was given a ride by a relative. At least one prospective employer she contacted was identified as being located in the Rio Grande Valley, although the claimant resided in North Texas. A list of job contacts was not written up until March 2000, after a benefit review conference (BRC) in which the claimant said it was implied she did not really search. She said that the list in evidence was made up from her recollection, and she did not recall the exact days she made the contacts.

The claimant contacted the Texas Rehabilitation Commission (TRC); evidence was submitted to show that during the qualifying period, she did not show up for three scheduled appointments. She said that this was due to various reasons, including her broken foot. The claimant testified that in the next quarter, she sent out a resume to a furniture store and was hired as a result, and she worked full time as a customer service representative. After this, she did not attempt to re-contact the TRC. She said that the drive to work lasted an hour and it was hard to sit in the car that long, but she intended to work at this job unless something closer to home came along. The claimant had only gone to school through the 9th grade.

The claimant said that near the end of Halloween, as she was getting out of her van, her foot twisted and she fractured it. She did not look for work while recovering from this. The claimant asked Dr. R to write a letter that it was connected to her back injury, and he did on March 31, 2000. His letter says that nerve damage and resulting weakness in her right foot was "partially responsible" for her foot fracture because she could not accurately feel the position of her foot.

As the hearing officer observes, the definition of "injury" in Section 401.011(26) includes damage or harm to the physical structure of the body "and a disease or infection naturally resulting from the damage or harm." Whether subsequent damage or harm naturally results from the initial injury is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993. A broken foot neither obviously qualifies as a disease or infection, nor does it naturally result from a back injury. The hearing officer's determination that the claimant's broken foot was caused by an independent, intervening circumstance is supported by the evidence.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e)(Rule 130.102(e) provides:

> Except as provided in subsections (d)(1)(2), and (3) of this section, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her search efforts.

It is the qualifying period under review that is considered for the job search efforts. Although the claimant argues that the job she actually obtained in April or May 2000 should be considered as a bona fide search for employment under Rule 130.102(d)(1), this job resulted from a contact made in a subsequent qualifying period and cannot be attributed back to the quarter under review. In addition to documentation, the hearing officer is required to consider various other factors, listed in Rule 130.102(e), to analyze whether the search made was one aimed at finding employment, as opposed to a pro forma search to qualify for benefits. In considering the record here, we agree that the hearing officer's determination is supported by the evidence.

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 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, *supra*. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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.).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). 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

Thomas A. Knapp
Appeals Judge