APPEAL NO. 001908

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 25, 2000. The hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on May 31, 1995; that her impairment rating (IR) was 20%; that she was entitled to supplemental income benefits (SIBs) for the 16th quarter from April 20 through July 19, 2000; and that the agreement of the parties dated October 5, 1998, was modified to correct the dates of the quarters of SIBs. The appellant (carrier) appealed the adverse findings of good faith and direct result, contending that the findings were not supported by the great weight and preponderance of the evidence and the claimant should not be entitled to SIBs for the 16th quarter. The determinations regarding MMI, IR and the dates of the SIBs quarters were not appealed and have become final by operation of law. Section 410.169. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that while working in a warehouse she slipped on some plastic pellets and fell on her neck and arm, injuring her neck. The hearing officer found that the claimant sustained a compensable neck injury on _____, and the finding has not been appealed. (There was no stipulation as to a compensable injury by the parties.) The claimant testified that she underwent a cervical C6-7 laminectomy in August 1993. No further surgery has been recommended. She testified that she went back to work during the qualifying period for the 14th quarter, worked through the 15th quarter, and quit her job on November 20, 1999, because it required too much fine manipulation with her right hand. The qualifying period for the 16th quarter began on January 7, 2000, and ended on April 6, 2000.

The claimant testified that she worked as a temporary worker at a high school during the last three days of the qualifying period for the 16th quarter. She testified that she worked as a secretary and the position was only to last for a period of five weeks, as the person who held the position was out on medical leave. The claimant asserted that she looked for work each week during the qualifying period, including the last three days of the period. The claimant explained that she had been released to light-duty work on August 5, 1998, by her treating doctor, Dr. O; that she could stand, walk, and sit for 45 to 60 minute periods with a change of position as needed; and that she was restricted to using only a speaker phone and to limited use of her right hand. A work release evaluation was signed by Dr. O on March 5, 1999, which reflects that the claimant was released to light-duty work with restrictions as follows: stand/walk for 6 to 8 hours; drive 3 to 5 hours; single grasping with the left hand only; fine manipulation with both hands; and, occasional pushing and pulling with both hands. The claimant could bend, twist, squat and reach on a frequent basis and climb on a minimal basis. The restrictions were amended on January 4, 2000, to include the use of a speaker/headset telephone for prolonged telephone work and limited her sitting to 45 to 60 minutes without getting up and moving.

Approximately five years ago the claimant moved to (city 1), Wisconsin, which is a suburb of (city 2), Wisconsin. The claimant asserted that her job search was conducted in Green Bay, Wisconsin which is "the largest city in this area and it's very industrialized. It's got an awful lot of businesses . . . it's a good center for work possibilities." The claimant testified that she looked in the local newspapers for work each week and made 56 contacts for employment by sending out her resume to these businesses and writing or calling for an application. She explained that the secretary job was obtained through a referral from a friend. The claimant testified that she listed her name with the Wisconsin Job Search employment organization in May 1999 and also with a rehabilitation counselor, but did not seek the assistance of temporary staffing agencies. The claimant related that she had worked in the past at various administrative/secretarial positions prior to working as an order handler in the warehouse for the employer.

Section 408.143 provides that an employee continues to be entitled to SIBs after the first quarter if the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has made a good faith effort to obtain employment commensurate with his or her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5)) provides that an injured worker has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that an injured worker who 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. The employee has the burden of proving entitlement to SIBs for any quarter claimed. Texas Workers' Compensation Commission Appeal No. 941490, decided December 19, 1994.

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. 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.

In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it 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 could 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).

Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer that the claimant made a good faith effort to obtain employment commensurate with her ability to work, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The hearing officer determined that during the qualifying period for the 16th quarter the claimant's unemployment during a portion of the qualifying period was a direct result of the impairment from her compensable injury. The Appeals Panel has on numerous occasions commented on the phrase "as a direct result of the employee's impairment" in Sections 408.142 and 408.143 and stated that the unemployment or underemployment need only be a direct result and not the direct result. Upon review of the record submitted, we find no reversible error and find the evidence sufficient to support the determination of the hearing officer that the claimant's unemployment during a portion of the qualifying period was a direct result of her impairment from the compensable injury. However, this finding does not completely resolve the direct result criterion as only "a portion" of the qualifying period has been addressed by the hearing officer.

The Appeals Panel may affirm a determination on any grounds supported by the record. Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied); Texas Workers' Compensation Commission Appeal No. 000573, decided May 1, 2000. We have a duty to apply the applicable law to the issues raised, whether or not the hearing officer has made findings of fact, when the findings can be inferred. We infer from the conclusion of law recited by the hearing officer that the claimant is entitled to SIBs for the 16th quarter, the finding that the claimant began working in the temporary position before the end of the qualifying period, and the record adduced at the CCH that the claimant's underemployment during the last three days of the qualifying period was a direct result of her impairment from the compensable injury. We hold that the hearing officer's specific and implied determination as to direct result is not so against the great weight and preponderance of the evidence as to be manifestly unjust and there is no sound basis to disturb this determination. King, supra; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge