APPEAL NO. 001956

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 19, 2000. The issues at the CCH were whether the claimant was entitled to supplemental income benefits (SIBS) for her sixth and seventh quarters of eligibility.

The hearing officer found no entitlement. He found that the claimant's unemployment was not the direct result of her impairment, and further that she had not made a good faith search for employment for either quarter.

The claimant appeals and argues that the hearing officer has simply lumped together the two quarters in issue. The claimant disputes the factual determinations made by the hearing officer, complaining that nearly all evidence favorable to her case was discounted. She argues that her psychological condition affected her demeanor. The self-insured responds by reciting facts in favor of the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

The claimant was employed as a teacher by the (the self-insured). Although employed to teach a class of known problem students (seventh through twelfth grade), she contended she suffered a posttraumatic stress disorder injury from a knifing that occurred in this class on _____. The claimant was not physically injured herself when she intervened. The claimant was assigned an impairment rating (IR) of 20%. Her treating doctor was Dr. P.

After direct and cross examination, the hearing officer asked more questions about the injurious incident; it turned out that the knifing incident actually took place two years earlier in _____, and that the injurious incident involved a fight between two girls which the claimant broke up occurred in _____ and the claimant was reprimanded by her supervisor for the manner she handled the students.

The qualifying periods under consideration ran from November 1, 1999, through May 1, 2000. The hearing officer has fairly summarized the evidence, only some of which will be repeated here.

Although the claimant's attorney urged that the quarters be considered separately, he acknowledged that claimant's restrictions for both quarters were essentially the same. One of the claimant's job restrictions was to work in an environment where she felt safe. The claimant explained that this determination would essentially be left to her subjective judgment. She also said that she was to have minimal contact with the public but, on the other hand, not be consigned to an isolated room where she would be performing

paperwork or "drudgery". The claimant testified that she had problems with people either working or walking behind her.

The claimant said that for the sixth quarter, she searched the newspaper and the governor's job Bank, registered with the Texas Workforce Commission (TWC), and followed up on two job referrals from the vocational counselor referred by the carrier. There were approximately 37 job contacts listed on her Statement of Employment Status (TWCC-52). She said that because Dr. P told her to start out with part-time work, she was looking for a job that would start out at 30 to 35 hours a week and then increase to 40 hours a week. The claimant said that even though some of the positions she sought were full-time jobs, she would explain her circumstances to these people in an interview.

There was evidence that the claimant's availability to be contacted by Mr. F, the vocational counselor, had been curtailed by her attorneys, but she stated at the CCH that it had been "worked out" that they could communicate by FAX. She said that this was due to the problem she had with "direct confrontation" and pursuant to Dr. P's recommendation that someone else be present to look out for her well-being. The claimant said she was phobic about school, and would not be able to work at an (grocery store) because she would not have "control or backup". The claimant had knowledge of how to use a computer for various tasks.

The hearing officer has cited the restrictions suggested by Dr. P: starting part time and gradually working up to full time, avoidance of strong public contact, exercise of control over her job, and avoidance of work near windows. Dr. P did not state that she was not to have jobs involving "drudgery". In November 1999, Dr. P reported that the ongoing workers' compensation case was a significant stressor in her life, leading to hospitalization in the summer of 1999. In a May 2000 letter, Dr. P attributed the claimant's disability from working as a classroom teacher to both the knifing incident and her 1995 injury.

During the periods of time in question, the claimant applied for a number of training positions. Some were posted as part-time jobs. She said that while travel was required for some of these jobs, it would involve staying at secure hotels or traveling within the same city and should not present a problem with her restrictions. Mr. F testified as to his impression that only a few of the jobs for which the claimant applied were within her restrictions. Mr. F acknowledged that she had put effort into her job search, but did not seem to be taking her search to the next step beyond merely sending out resumes or searching for posted notices of part-time jobs. It was agreed during the CCH that the relationship between Mr. F and claimant had improved markedly after the period of time under review.

The claimant had returned to work as a part-time nanny on May 15, 2000, or after the qualifying periods under review. Most of the time this involved watching the child while a parent working out of the home was on premises. She was paid $5.00 an hour. A letter from Dr. P noted that the claimant was somewhat overqualified for this position. Mr. F said that he did not consider this to be an "appropriate" job.

As the hearing officer noted, there was considerable testimony about the extent to which the claimant cooperated with Mr. F. However, the obligation to search for employment commensurate with one's ability to work does not begin and end only with referrals from a vocational counselor, although the extent and ease of co-operation with a counselor is a factor that can be weighed by the hearing officer. The hearing officer was faced with evaluating the claimant's efforts as "good faith" in accordance with Section 408.143(a) and Rule 130.102(d) and (e). While the highly restricted manner of dealing with the vocational counselor was a factor that the hearing officer could evaluate, it is clear from his decision that he considered the full range of criteria listed under Rule 130.102(e) and found the claimant's efforts wanting in terms of genuine efforts to seek a return to the workplace at a position that matched both her education, experience, and her restrictions.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.- Amarillo 1974, no writ). 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.). We note that the claimant in no way indicated during the CCH that she felt her abilities or faculties to be impaired insofar as her testimony would be affected. 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).

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 accordingly affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge