

APPEAL NO. 002020

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 August 8, 2000. The hearing officer determined that the compensable injury of the appellant (claimant) did not extend to an injury to claimant's teeth and that claimant is not entitled to first quarter supplemental income benefits (SIBs). Claimant appealed these determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that her injury did not extend to include an injury to her teeth. Claimant said she sustained broken teeth when her leg gave way and she fell. Claimant asserts that the injury to her teeth naturally resulted from her compensable back injury because the injury caused weakness in her leg that caused the fall.

Under the 1989 Act, a claimant has the burden of proving that he or she sustained a compensable injury and the extent of the injury. Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995. The 1989 Act defines injury, in pertinent part, as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." In this case, the hearing officer determined that the probative medical evidence did not establish a causal relationship between claimant's employment and the claimed injury to claimant's teeth. This issue involved a fact question for the hearing officer, which he resolved. Appeal No. 951959, *supra*. The hearing officer could decide to believe all, none, or any part the evidence. He decided what weight to give to the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). After reviewing the evidence, we conclude that the hearing officer's determination regarding extent of injury is not so against the great weight and preponderance of the evidence as to be wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We note that claimant complains that the hearing officer determined that she fell on October 30, 1999, and stated that she did not fall that day. Claimant testified that she fell several times, and testified that the fall that broke her teeth was on October 30, 1999. Although we perceive no error, we note that any possible error in this finding is not such that it would have caused the rendition of an improper decision.

Claimant contends the hearing officer erred in determining that she is not entitled to SIBs. Claimant asserts that she had no ability to work at all during the qualifying period, which ran from October 27, 1999, to January 25, 2000. Claimant sustained a

compensable injury in _____ when she tripped and fell over a box. Medical records indicate that she underwent fusion surgery in October 1997 and that claimant had had a herniated disc and had undergone spinal surgery for this prior to this compensable injury. Claimant underwent surgery to remove hardware in July 2000, a few months before the qualifying period began, and another surgery to remove scar tissue in April 2000, about three months after the qualifying period ended. Claimant testified at the hearing that she was unable to work because she could not sit for very long, she was unable to do most housework, her medications made her disoriented, her leg was not stable, and she was in pain. Claimant testified that during the qualifying period, she drove short distances, she was able to fold clothes at home, she walked between three and four miles every other day, and sometimes rode a bicycle for exercise to try to gain strength. She said she asked if she could work, but Dr. L said he preferred that she wait until everything healed and her bones fused.

In a November 1999 report, Dr. L stated that claimant had incapacitating pain; weakness that causes her to fall; severe trouble with her left lower extremity; and has been unable to work for those reasons. In a May 2000 report, Dr. L stated that claimant is unable to work; that when he saw her in April 1998, she needed a “walker” that claimant has pain and weakness that has been going on “long enough”; and that he hoped the April surgery would help claimant so that she can return to work in the future. In a report written in February 2000, Dr. B, carrier’s second opinion doctor for surgery, noted claimant’s positive Waddell’s signs, that she improvised a carefully crafted fall at his office, and that he told her he would no longer participate in an examination when she was acting in such a way that she might injure herself.

The criteria for entitlement to SIBs are set forth in Sections 408.142(a) and 408.143. The law regarding SIBs, good faith, and an assertion that there was no ability to work at all during the qualifying periods is discussed in Texas Workers' Compensation Commission Appeal No. 000004, decided February 15, 2000. The version of Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)) then in effect provided that an employee may be in good faith if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The Appeals Panel's standard of review in this case is also set forth in Appeal No. 000004.

The hearing officer summarized the facts in his decision. In this case, claimant had the burden to prove that she had no ability to work. Texas Workers' Compensation Commission Appeal No. 950582, decided May 25, 1995. The hearing officer was the sole judge of the credibility of the evidence and he judged the credibility of the medical evidence regarding whether claimant had an ability to work during the qualifying period. The hearing officer specifically found that claimant had an ability to perform some work and that she did

not meet her burden of proof regarding the good faith SIBs criterion. The hearing officer made his determinations regarding claimant's ability to work based on the evidence before him. Because the hearing officer determined that claimant was able to do some work, and claimant did not look for work, the hearing officer did not err in determining that claimant did not meet the good faith SIBs criterion. The hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we will not substitute our judgment for his. Cain, *supra*. Claimant complains that the hearing officer did not review the record in this case. However, there is nothing to indicate that the hearing officer failed to consider the evidence. We perceive no error.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Elaine M. Chaney
Appeals Judge