APPEAL NO. 002073

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 August 14, 2000. The issues at the CCH were whether the appellant (claimant) was entitled to the 13th and 14th quarters of supplemental income benefits (SIBs). The hearing officer determined he was not entitled to either quarter. The claimant appealed. The respondent (carrier) responds that the decision is supported by the evidence and should be affirmed.

DECISION

The hearing officer's decision and order are affirmed.

The claimant worked as a carpenter for (employer) and injured his low back and left leg as he lifted a heavy metal grate. He has not had any surgery for the compensable injury, but was assigned a 16% impairment rating (IR). The hearing officer determined that the claimant did not commute any portion of the impairment income benefits (IIBs) and that the claimant's unemployment during the qualifying period for the 13th and 14th quarters of SIBs was a direct result of his impairment. Those determinations have not been appealed. The qualifying period for the 13th quarter of SIBs was from October 27, 1999, through January 25, 2000, and the qualifying period for the 14th quarter was from January 26 through April 25, 2000. It is uncontroverted that the claimant made no job search during the qualifying period for the 13th quarter but did make a job search during all but the first two weeks of the qualifying period for the 14th quarter.

In his findings of facts, the hearing officer held as follows:

FINDINGS OF FACTS

4. During the qualifying periods for the 13th and 14th quarters, the claimant had some ability to work.

5. During the qualifying period for the 13th quarter, the claimant made no job search efforts.

6. During the qualifying period for the 14th quarter, the claimant did not make a weekly search for employment.

7. During the qualifying period for the 13th and 14th quarters, the claimant did not make a good faith effort to secure employment commensurate with his abilities.

In his appeal, the claimant states that he disagrees with Finding of Fact No. 4 because he has and had no ability to work at all because the medications he takes keep

him from driving or working. He stated that he disagreed with Finding of Fact No. 5 because when he did not apply for a particular job, he was looking at want ads, looking around, or looking in the Greensheet. He then states that he disagrees with Finding of Fact No. 7 because he made an extremely good faith effort and that it takes a great deal of effort for him to get dressed and get someone to drive him to search for work.

A finding of no ability to work turns on the claimant's meeting the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) which provides that the claimant must show that he has been unable to perform any type of work in any capacity, must provide a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and there can be no other records that show that the injured employee is able to return to work. A claimed inability to work is to be "judged against employment generally, not just the previous job where the injury occurred."

In this case, both the claimant and the carrier submitted Functional Capacity Evaluation (FCE) reports into evidence. The claimant offered two reports, both based upon a single evaluation, and argued that the FCE was not entitled to any weight because of discrepancies in the two versions of the report. The reports, though different, both support the hearing officer's determination that the claimant had the ability to do some work during the qualifying periods for the 13th and 14th quarters. In one FCE report, the claimant was assessed to be able to lift five pounds from the floor to the knuckle on an occasional basis and five pounds from the knuckle to the shoulder on an occasional basis; he was determined to be able to sit occasionally, stand frequently, walk frequently, and climb stairs occasionally. He also demonstrated the ability to bend, reach overhead, crawl, squat, kneel, climb a ladder, and reach forward. Those abilities were also reflected on the second FCE report. The hearing officer's determination that the claimant had some ability to work during the qualifying periods for both quarters in issue is supported by the FCE reports. The hearing officer's determination also finds some support in a letter from the claimant's treating doctor, dated February 3, 2000, which stated:

> The results of a[n] [FCE] performed on 11/30/99 shows [sic] that [the claimant] may be able to return to work in a sedentary type of job with no bending, and no lifting greater than 5 pounds apparently in the range from a tabletop height to a shoulder height.

and in a subsequent letter to the claimant's adjuster, dated March 30, 2000, wherein the doctor stated:

> For your information, [the claimant] received no work release of any sort from this office prior to 02/01/00. He tells me that you denied benefits to him for the quarter ending 01/31/00 based on the 02/01/00 work release.

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 testimony of a claimant to a matter in controversy is not

conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The claimant asserted that he began looking for work as soon as he became aware of the results of the FCE. He testified that he was unaware of those results until February 10, 2000, the date he first began to make any job contacts. A release to return to work is not required to trigger an injured employee's duty to seek employment in good faith. Texas Workers' Compensation Commission Appeal No. 962609, decided February 6, 1997. Even had the hearing officer believed that the claimant was unaware that he had some ability to work until the claimant received a copy of the FCE report, the report shows that the claimant had an ability to work in November, 1999, and there is no evidence that he did not have an ability to work through the date he acknowledges that he received the report.

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 determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Finding no reversible error and sufficient evidence to support the determinations of the hearing officer, the decision and order are affirmed.

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Kenneth A. Huchton
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Tommy W. Lueders
Appeals Judge