APPEAL NO. 002586

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 September 22, 2000. The issues at the CCH were whether the appellant (claimant) was entitled to supplemental income benefits (SIBs) for the 11th, 12th, and/or 13th quarters. The hearing officer determined that the claimant was not entitled to SIBs for any of the quarters in issue. The claimant has appealed, asserting that the hearing officer's determinations that his unemployment during the qualifying periods was not a direct result of his impairment and that he did not make a good faith effort to seek employment commensurate with his ability to work during the qualifying periods were against the great weight of the evidence. The respondent (self-insured) responds, asserting that the evidence is sufficient to support the hearing officer's decision and requesting that we affirm.

DECISION

Affirmed.

At issue in this matter is the claimant's entitlement to SIBs. The hearing officer found that the claimant's unemployment during the qualifying periods was not a direct result of his impairment from the compensable injury and that the claimant, who had made no job search during the qualifying periods in question, had some ability to work during the qualifying periods. The hearing officer's decision indicates that the hearing officer did not find the claimant to be credible. The claimant asserts that the hearing officer erred in finding that his unemployment was not a direct result of his impairment and that he did not make a good faith effort to seek employment commensurate with his ability to work. The claimant sums up what he believes to be the views of certain doctors. Those doctors are Dr. E, the claimant's treating doctor; Dr. B, the claimant's surgeon; and Dr. P, a Texas Workers' Compensation Commission-selected doctor.

It is undisputed that the claimant was working, and earning more than 80% of his average weekly wage, for four and one-half months immediately before the beginning of the qualifying period for the 11th quarter of SIBs. The claimant sustained a left knee injury, was asked to take on more responsibility, became upset with his supervisor, and quit. He made no effort to seek employment during any of the qualifying periods for the quarters in issue.

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). A claimant's testimony 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 hearing officer was acting within his province as the trier of fact in judging the claimant's credibility. 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). 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.

In this case, the hearing officer had evidence that the claimant had obtained employment, that the employment was for more than 80% of the claimant's average weekly wage, and that the claimant had voluntarily left that employment after the self-insured had discovered that the claimant: was employed despite applications for two previous quarters of SIBs which failed to reveal earnings from the employment and which appeared to assert that the claimant was totally unable to work in any capacity, and that the claimant had sustained an injury to his knee which ultimately required surgery. The hearing officer also had evidence from the claimant's treating doctor that indicated that the claimant's condition had not materially changed during the time he was employed, evidence from the claimant's surgeon which supported a proposition that the claimant could no longer engage in his preinjury employment but did not exclude all other forms of employment, and evidence from Dr. P that indicated that the claimant would need further rehabilitation before he could return to any type of employment.

An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement 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, 244 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 judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge