APPEAL NO. 002687

Following a contested case hearing held on October 25, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals, challenging specific findings by the hearing officer and arguing that the hearing officer erred in finding that he had an ability to work during the qualifying period for the first quarter. There is no response to the claimant's request for review from the respondent (carrier herein) in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)) provides as follows:

> Eligibility Criteria. An injured employee who has an impairment rating of 15% or greater, and who has not commuted any impairment income benefits, is eligible to receive [SIBs] if, during the qualifying period, the employee:
>
> (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and
>
> (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work.

The question before us on appeal is whether there is sufficient evidence to support the hearing officer's determination that the claimant failed to make a good faith effort to obtain employment commensurate with the employee's ability to work as this was the basis of the hearing officer's denial of SIBs. The claimant contends that the evidence established that he made a good faith effort by showing that he met the requirements of Rule 130.102(d)(4), which provides as follows:

> Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
>
> (4) 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[.]

There was various medical evidence as to whether the claimant had a total inability to work during the qualifying period[1] for the first quarter.[2] Dr. A, the claimant's treating doctor, stated in February 2000 that the claimant could do sedentary work, but in April 2000 rescinded this opinion and stated that the claimant could not work. Dr. M, a psychologist, also stated that the claimant was unable to work. The hearing officer found that these narratives failed to explain specifically how the claimant's injury caused a total inability to work.

The question of whether or not medical records show that the claimant had an ability to work during the qualifying periods under consideration is one of fact. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. 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 regarding 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.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the hearing officer's determination that the claimant failed to provide a narrative report from a doctor that specifically explained how his injury caused a total inability to work.

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[1]Pursuant to Rule 130.102(b), the quarterly entitlement to SIBs is determined prospectively and depends on whether the employee meets the eligibility criteria during the "qualifying period." Under Rule 130.101, "qualifying period" is defined as the 13-week period ending on the 14th day before the beginning of a compensable quarter.

[2]The parties stipulated that the qualifying period for the first quarter was from April 12 through July 11, 2000.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge