

APPEAL NO. 010340

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 January 25, 2001. With regard to the issue before him the hearing officer decided that the respondent (claimant herein) was entitled to supplemental income benefits (SIBs) for the second quarter. The appellant (carrier herein) files a request for review arguing that the hearing officer erred in finding that during the qualifying period for the second compensable quarter the claimant made a good faith effort to seek employment and that the claimant's unemployment was a direct result of his impairment. The claimant responds that the findings of the hearing officer were sufficiently supported by the evidence.

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.

The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on June 7, 1999, with an impairment rating (IR) of 19%; that the claimant has not commuted any portion of his impairment income benefits; and that the qualifying period for the second quarter began on April 26, 2000, and ended on July 26, 2000. The claimant testified that he sought employment during each week of the qualifying and that the work he sought was within his restrictions.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

- (a) An employee is entitled to [SIBs] if on the expiration of the impairment income benefit period computed under Section 408.121(a)(1) the employee:
 - (1) has an [IR] of 15 percent or more as determined by this subtitle from the compensable injury;
 - (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
 - (3) has not elected to commute a portion of the impairment income benefits under Section 408.128; and

- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

The fact that the claimant met the first and third of these requirements was established by stipulation. This case revolved around whether the claimant met the second and fourth of these requirements. We have previously held that both the question of whether the claimant made a good faith job search and whether the claimant's unemployment was a direct result of his impairment are questions of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994.

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 of review there is certainly evidence to support the hearing officer's finding of a good faith job search. The claimant testified that he looked for jobs at a number of places during the qualifying period and the hearing officer accepted this testimony. The carrier complains about the quality of the claimant's job search, but judging the quality of the claimant's search involved weighing the evidence. We cannot say that the hearing officer did not properly apply the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) in finding that the claimant made a good faith job search. The carrier argues that the claimant failed to properly meet the documentation requirements of this rule without benefit of citation to authority. We note that the claimant both testified concerning his job search and listed his job contacts on his Application for Supplemental Income Benefits (TWCC-52).

In regard to direct result, the carrier argues that the evidence showed that the claimant's unemployment during the qualifying period was due to his lung problems rather

than his impairment. While there is evidence that the claimant was suffering from a lung disorder unrelated to his compensable injury, we have held that the claimant need only prove that the impairment was a direct result of his employment not that the unemployment was solely caused by the impairment. See Texas Workers' Compensation Commission Appeal No. 952082, decided January 10, 1996. We find no error in the hearing officer's finding that the claimant's unemployment was a direct result of his impairment.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge