APPEAL NO. 010758

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 March 20, 2001. The hearing officer determined that: the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters; the claimant had an ability to work full duty without restrictions; the claimant's underemployment and unemployment were not a direct result of her impairment; the claimant did not make a good faith effort to obtain employment commensurate with her ability to work; and, the claimant was not enrolled in, and satisfactorily participating in, a full-time vocational rehabilitation program (VRP) sponsored by the Texas Rehabilitation Commission (TRC).

The claimant has appealed on all issues. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Sections 408.142 and 408.143 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case are direct result, the good faith job search, and full-time enrollment in a VRP sponsored by the TRC.

On _____, the claimant sustained a compensable right-hand injury which required surgery. The claimant reached maximum medical improvement on March 17, 1999, with a 23% impairment rating. The claimant has not commuted any portion of her impairment income benefits. The qualifying period for the first quarter was March 31, 2000, through June 29, 2000, and the claimant earned $47.10 in wages. The claimant did not submit an Application for [SIBs] (TWCC-52) for the second quarter. The claimant did not earn any wages during the qualifying periods for the second and third quarters. The qualifying period for the third quarter was September 29, 2000, through December 28, 2000.

DIRECT RESULT

To be eligible for SIBs, the claimant must establish that her unemployment or underemployment is a direct result of her impairment (Section 408.142(a)(2); Rule 130.102(b)(1)). The hearing officer determined that the claimant's unemployment or underemployment was not a direct result of her impairment. In making her determination, the hearing officer considered the medical reports from the claimant's treating doctor, Dr. A, which indicate that the claimant, "should have been able to return to full work duty status at least at the position she had been in at the time of her work injury as of April 10, 2000" and the claimant's testimony that she could not return to her former position. The hearing

officer also considered the fact that the claimant did not treat for her injury from January 2000 until February 2001. The hearing officer determined that the claimant had failed to meet her burden of proof on the issue of direct result.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We find sufficient evidence to support the hearing officer's determination on this issue.

GOOD FAITH EFFORT TO OBTAIN EMPLOYMENT

Section 408.142(a)(4) and Rule 130.102(b)(2), (d)(2), and (e)(4), require an injured employee to make a good faith effort to obtain employment commensurate with her ability to work or be enrolled in, and satisfactorily participate in, a full-time VRP sponsored by the TRC during the qualifying period in order to be entitled to SIBs. Although there was an Individualized Plan for Employment (IPE) submitted into evidence, the claimant had the burden of proving that she was cooperating with the TRC and complying with the IPE, not merely showing that an IPE is in existence. There was conflicting evidence presented as to the claimant's level of participation in a VRP and compliance with the IPE. Although the claimant contends that she was a full-time participant in a TRC-sponsored VRP, the hearing officer apparently did not believe that she was satisfactorily participating in a VRP and complying with the IPE. The claimant did not offer any proof, in the form of a letter or otherwise, that the TRC has determined that she was satisfactorily participating in a full-time VRP. *See* Texas Workers' Compensation Commission Appeal No. 010483-S, decided April 20, 2001. Similarly, the hearing officer determined that the claimant made approximately 34 job contacts in the qualifying periods for the first and third quarters. In discussing the claimant's job search effort, the hearing officer states, "Although the Claimant may be limited in the types of jobs she can obtain due to the language and education barriers, she chose to restrict her job search . . . ." The hearing officer also commented that the claimant's TWCC-52 applications were incomplete with regard to addresses, phone numbers, applications filed, and whether the employer was hiring. Whether or not a claimant has successfully met the requirements of Rule 130.102(b), (d), and (e) is determined on a case-by-case basis. The evidence presented at the CCH regarding these issues was conflicting. In this case, the hearing officer heard the evidence and determined that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work, and that the claimant's participation in the TRC VRP was not full time. Based on all of the evidence presented, the hearing officer's determinations on these issues are not so against the great weight and preponderance of

the evidence as to be clearly wrong or manifestly unjust. Cain v Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge