APPEAL NO. 011049
FILED JUNE 21, 2001

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 April 19, 2001. In resolving the sole issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 11th compensable quarter. The claimant appeals and seeks reversal on sufficiency grounds. The respondent (self-insured) responds and urges affirmance in all respects of the hearing officer's decision and order.

DECISION

We affirm based on our standard of review.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the 11th compensable quarter. The parties stipulated that all prerequisites, other than that of the "good faith" job search, to the claimant's eligibility for SIBs had been met. At the CCH, the claimant testified that he was totally unable to work in any capacity and put into evidence records from his treating doctor, Dr. G, stating that he had no ability to work because of his serious, compensable injury, sustained _____. The self-insured introduced a record from its required medical examination doctor, Dr. P, which stated that the claimant had some ability to perform sedentary or light-duty work with restrictions. The claimant did not attend a functional capacity evaluation that was scheduled the day of Dr. P's examination. Dr. P's examination took place during the qualifying period.

The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)), applicable to this case, provides that an injured employee has made a good faith effort to look for work commensurate with the employee's ability to work if the employee "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." We have generally recognized that the question of whether another record "shows" an ability to work is a question of fact for the hearing officer, as the fact finder and the sole judge of the weight and credibility of the evidence under Section 410.165(a), to resolve. Texas Workers' Compensation Commission Appeal No. 992920, decided February 9, 2000; Texas Workers' Compensation Commission Appeal No. 000098, decided March 3, 2000; Texas Workers' Compensation Commission Appeal No. 000302, decided March 27, 2000; and Texas Workers' Compensation Commission Appeal No. 000323, decided March 29, 2000.

In this case, Dr. P's report reads, in pertinent part, "[claimant] is indeed capable of returning to the workplace, at the minimum a sedentary or a modified light-duty position." Dr. P found little objective evidence of a claimed inability by the claimant to use his forearms. The hearing officer found that Dr. P's report constituted an "other record"

showing that the claimant has some ability to work. The claimant's argument that Dr. P's report is based solely upon the claimant's ability to perform daily activities, and not upon the results of a functional capabilities examination is without merit. We have written that the doctor may make evaluations of one's ability to work based upon his observations of the individual. *See* Texas Workers' Compensation Commission Appeal No. 980879, decided June 15, 1998, and Texas Workers' Compensation Commission Appeal No. 992786, decided January 18, 2000 (Unpublished).

The parties presented conflicting evidence on the issue in dispute. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). 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). This tribunal will not disturb the challenged finding of a hearing officer unless it is 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge