APPEAL NO. 011594
FILED AUGUST 15, 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 was held on June 4, 2001. The hearing officer resolved the sole disputed issue by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth quarter, from August 2, 2000, through October 31, 2000. The claimant filed a request for review of the hearing officer's determination. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The evidence sufficiently supports the hearing officer's determination that the claimant is not entitled to SIBs for the eighth quarter from August 2, 2000, through October 31, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment 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.

The hearing officer determined from the claimant's Application for [SIBs] (TWCC-52) that the claimant did not list any job searches, and that other documentation in evidence was insufficient to show that the claimant sought employment every week of the qualifying period. Also, the hearing officer determined that the medical records in evidence failed to list the claimant's physical restrictions or explain how the compensable injury rendered the claimant unable to perform work of any kind during the eighth quarter qualifying period.

The claimant contends that a functional capacity evaluation (FCE) performed on November 16, 2000, is outside of the qualifying period and should be disregarded as not credible. The Appeals Panel has held that the fact that evidence falls outside the qualifying period may affect the weight the hearing officer decides to assign to a given piece of evidence but it does not preclude the hearing officer from considering that evidence in resolving the issue before her. Texas Workers' Compensation Commission Appeal No. 000096, decided February 29, 2000; Texas Workers' Compensation Commission Appeal No. 960901, decided June 20, 1996. We perceive no error in the hearing officer's having considered the FCE.

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. Section 410.165(a). 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). We will reverse the factual determinations of a hearing officer only if those determinations are so against 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge