DECISION
ON
APPEAL

FILED

APR 24 2002

DIRECTOR
DIVISION OF HEARINGS
TEXAS WORKERS'
COMPENSATION COMMISSION

APPEAL NO. 020609

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 February 13, 2002, in , Texas, with presiding as hearing officer. The hearing officer determined that the appellant's (claimant) compensable injury of does not include the lumbar spine, depression, fibromyalgia, and myofascial pain syndrome, and that the claimant is not entitled to supplemental income benefits (SIBs) for the 18th quarter. The claimant appeals the adverse determinations on sufficiency of the evidence grounds. The respondent (carrier) replies, urging affirmance.

DECISION

Affirmed.

An injury is "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). Whether an employee has "a disease or infection naturally resulting from the damage or harm," or whether an injury extends to a particular member of his body, is a factual matter for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Where the matter of the causation of the claimed injury is beyond common knowledge or experience, expert evidence to a reasonable degree of

medical probability is required. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The claimant sustained a compensable injury to her neck and shoulder, with a date of injury of The hearing officer was presented with a substantial amount of medical records pertaining to the claimant and numerous conflicting opinions on the issue of whether the compensable injury included the above-named conditions. There is evidence which sufficiently supports the hearing officer's factual determination that the compensable injury does not include the lumbar spine, depression, fibromyalgia, and myofascial pain syndrome.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony, and resolves conflicts and inconsistencies in the evidence. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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 Appeals Panel will not 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). Only were we to conclude, which we do not in this case, that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb that determination. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute was whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the 18th quarter. The parties stipulated that the qualifying period for the 18th quarter was from July 21 through October 19, 2001. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

While the claimant listed 124 job contacts during the qualifying period for the 18th quarter, the hearing officer found from all of the evidence presented that the claimant failed to make a good faith effort to obtain employment commensurate with her ability to work.

In the Statement of the Evidence, the hearing officer characterized the claimant's effort as "just going through the motions." Rule 130.102(e) sets forth a number of factors for the hearing officer to consider in determining whether the claimant made a good faith effort to obtain employment commensurate with her ability to work, including, but not limited to, the number of jobs applied for; the type of jobs applied for; registration with the Texas Workforce Commission; and the amount of time spent in attempting to find employment. The issue in dispute presented a question of fact for the hearing officer to resolve based on the evidence presented. The hearing officer was not persuaded that the claimant's efforts amounted to a good faith effort to obtain employment commensurate with her ability to work. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

C. T. CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge