APPEAL NO. 021996
FILED SEPTEMBER 16, 2002

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 July 12, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th and 13th quarters. The claimant appeals the determinations on legal and evidentiary grounds. The respondent (self-insured) urges affirmance.

DECISION

We affirm.

The hearing officer did not err in determining that the claimant is not entitled to 12th and 13th quarter SIBs. The claimant initially asserts that the self-insured was limited in its contest of SIBs to the grounds set forth in its notice of nonentitlement Section of the Application for [SIBs] (TWCC-52)--i.e. the "direct result" criterion--and that the hearing officer could not consider, as she did, whether the claimant satisfied the good faith requirements of Section 408.142(a)(4) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). We addressed a similar argument in Texas Workers' Compensation Commission Appeal No. 980106, decided March 3, 1998. In that case, we noted that entitlement to SIBs must always include a showing of direct result and good faith, and held that nothing in the 1989 Act, rules, or Appeals Panel decisions limited the issues to what was stated on the TWCC-52. *See also* Texas Workers' Compensation Commission Appeal No. 991922, decided October 18, 1999. Accordingly, the hearing officer correctly considered both criteria in this proceeding.

Whether the claimant's underemployment was a direct result of the impairment from the compensable injury and whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods were fact questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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 (Tex. 1986).

The claimant asserts that the hearing officer erred in considering Self-Insured's Exhibit Nos. 3 and 5. Specifically, the claimant contends that the exhibits were so confusing and conflicting that they should not have formed a basis for the hearing officer's decision. The claimant's contention goes to the weight and credibility to be given to the evidence and is not, itself, grounds for reversal of the hearing officer's

decision. As stated above, the hearing officer is the sole judge of the weight and credibility of the evidence and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence. As an appellate body we will not substitute our judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995.

With regard to Self-Insured's Exhibit No. 5, the claimant also argues that the medical record, a report by a Texas Workers' Compensation Commission-appointed designated doctor concerning the claimant's ability to return to work, is not signed and should not have been considered. We have held that where there are reports that have not been signed, the hearing officer has the discretion to admit those that appear to be authentic medical records. Texas Workers' Compensation Commission Appeal No. 000300, decided March 23, 2000. Next, the claimant asserts that the report cannot be considered, as a matter of law, because the designated doctor was previously appointed to resolve a dispute of maximum medical improvement and impairment rating and, pursuant to Rule 130.110(e), may not now be appointed to address a dispute regarding the claimant's ability to return to work. We note that this case does not involve the application Rule 130.110, regarding whether an injured employee whose medical condition prevented her from returning to work in the prior year has improved sufficiently to allow her to return to work on or after the second anniversary of her initial entitlement to SIBs, nor was it argued that the designated doctor's report should be given presumptive weight with regard to the extent of the claimant's ability to work. Moreover, the claimant did not raise this objection at the hearing. Accordingly, any error in the admission of the record was waived and will not be considered for the first time on appeal.

We affirm the hearing officer's decision and order.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

MANAGER
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Michael B. McShane
Appeals Judge