APPEAL NO. 031154
FILED JUNE 24, 2003

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 April 10, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 17th and 18th quarters. The claimant has appealed and asserts that the hearing officer improperly considered the designated doctor's report and a functional capacity evaluation (FCE), both of which were generated outside of the relevant qualifying periods, and that she did not consider the treating doctor's opinion and the fact of the claimant's surgery. The claimant contends that the SIBs determination is against the great weight and preponderance of the evidence. The carrier has responded and argues that since there was another report negating the claimant's assertion of total inability to work, she was required to perform a work search in every week of the qualifying periods and failed to do so. The carrier seeks affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative requirements for SIBs. The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement with an impairment rating of 15% or greater; that the qualifying period for the 17th quarter started May 25 and ended August 23, 2001; that the qualifying period for the 18th quarter started August 24 and ended November 22, 2001; and that the claimant's unemployment during the relevant qualifying periods was a direct result of her impairment.

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 as 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. In Texas Workers' Compensation Commission Appeal No. 960880, decided June 18, 1996, the Appeals Panel stated that "medical evidence from the filing periods is clearly relevant but other medical evidence from outside the periods, especially that which is relatively close to the filing periods, may be relevant to the condition of the claimant during those periods." In Texas Workers' Compensation Commission Appeal No. 001055, decided June 28, 2000, the Appeals Panel noted that medical evidence from outside the qualifying period may be considered insofar as the hearing officer finds it probative of conditions in the qualifying period.

The hearing officer noted that during the 17th quarter qualifying period, a carrier-selected doctor found the claimant able to perform limited work and that this was confirmed by an FCE and the opinion of the designated doctor. Although the FCE and the report of the designated doctor were outside the relevant qualifying periods, the claimant indicated that her condition had not changed. With regard to whether other records showed an ability to work, the Appeals Panel has noted that whether another record shows an ability to work is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 000625, decided May 11, 2000.

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). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer.

We find no merit in the claimant's contention that the hearing officer failed to give any consideration to the surgery the claimant underwent or the recommendations from the surgeon.

The decision and order of the hearing officer are affirmed.

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

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Veronica Lopez-Ruberto
Appeals Judge