APPEAL NO. 980096

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 December 8, 1997. The issue at the CCH was whether the appellant, who is the claimant, was entitled to supplemental income benefits (SIBS) for her 11th compensable quarter.

The hearing officer rejected the claimant's contention that she was unable to work at all, and, as she had not searched for work, he found that she had not made a good faith search for employment commensurate with her ability to work. He further found that her unemployment was a direct result of her impairment.

The claimant has appealed, arguing that her restrictions are so severe she would not be able to perform any work and her doctor's opinion fully supports this. She argues that the workers' compensation system has deserted her although designed to safeguard her in this situation. The respondent, who is the carrier, responds that the evidence showed that claimant failed to follow up on advice given to her by the Texas Rehabilitation Commission (TRC). The carrier argues that there is substantial medical evidence showing that claimant had some capability to work during the relevant filing period. The carrier sets forth the facts it believes support the hearing officer's decision.

DECISION

Affirmed.

Claimant injured her back on _____, while employed as a production worker by (employer). She had two fusion back surgeries, in 1992 and 1993. Claimant has an 11th-grade education; she had not followed up on her doctor's advice, given three years earlier, to obtain a GED because she did not think she could sit in the classroom. It was stipulated that the filing period for the quarter in issue ran from May 25 through August 23, 1997. Claimant's treating doctor was (Dr. L), who had recommended on August 8, 1994, that the claimant seek light-duty work with her employer, according to the claimant. She said, however, that the employer told her there was none available. Dr. L's letter of that date recommended that in such circumstances, she should seek retraining through TRC. Claimant agreed she did not follow up on this suggestion until after the benefit review conference (BRC) which led to the CCH.

Pertinent to the filing period, a doctor for the carrier, (Dr. B), wrote on June 9, 1997, that there was no medical reason why claimant could not travel to and from work, and be at work performing appropriate activities. He recommended that she be allowed to have freedom of movement and body position, not perform mechanically paced tasks, not sit or stand for more than 30 minutes at a time, and not bend, twist, carry, stoop, or squat frequently. He suggested she be given lumbar support for any chair at work. After this, Dr.

L told her on July 14th (according to his office notes) that he agreed with Dr. B, although he opined that he doubted anyone would hire the claimant. Claimant said she did not begin a search for employment until after the July 31st BRC. The day after the BRC, she said she went to TRC to request assistance, went to Texas Workforce Commission to review their postings (but not again until after the filing period for the disputed quarter), and read the newspaper and made calls from her home. Claimant never testified that she had pain preventing her from functioning, and doing household chores. She stated that her reason for not looking for work was her desire to follow her doctor's advice, and he had told her she could not work. Most of claimant's more formal efforts at finding work took place in October and November; she said she had been hired for a part-time job the week before the CCH. For the August 1997 period of time that was part of the filing period in issue here, she said she had made phone calls to maybe 100 prospective employers but had written none of them down. She agreed that she had not listed any of these in her answers to the carrier's interrogatories.

The provisions of the 1989 Act that added the SIBS program also incorporate the requirement that the injured worker search for employment commensurate with the ability to work. As such, it is a transition benefit designed to support a worker in his or her return to the workforce before benefits end utterly 401 weeks after the injury date. *See* Texas Workers' Compensation Appeal No. 950114, decided March 7, 1995. Only where there is solid medical evidence of an inability to work can no search be equated to a "good faith" search commensurate with ability. Being limited to work with restrictions is not the same as being unable to work. Texas Workers' Compensation Appeal No. 941263, decided November 3, 1994. In this case, the hearing officer was faced with evaluating the claimant's contention that she was merely following her doctor's advice in refraining from work against the fact that she had not earlier taken her doctor's advice when it would appear to further a return to the workplace.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Christopher L. Rhodes
Appeals Judge