

APPEAL NO. 931159

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S. Article 8308-1.01 *et seq.*), a contested case hearing was held in (city), Texas, on November 19, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the first compensable quarter beginning May 29, 1993. The claimant appeals urging that she had satisfied the requirements for entitlement to SIBS and asks that the decision be reversed. The respondent posits that the evidence is sufficient to support the decision of the hearing office and requests the decision be affirmed.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, the decision is affirmed.

The claimant sustained a compensable injury to her back on (date of injury), while moving a wooden pallet. She reached maximum medical improvement (MMI) with a 15% impairment rating and had been released to work by her treating doctor effective "7-20-92" with a provision to "avoid heavy lifting with back." The claimant received impairment income benefits (IIBS) through May 28, 1993. During the 13 week period prior to the ending of IIBS, the claimant testified that she sought employment at several different places but that they were not hiring at the time. She testified that she did not inquire about employment advertised in want ads in the newspaper. She also indicated that she had worked in a school cafeteria during September and October 1992 but that she quit the job because the work was too heavy.

The carrier called IP who had worked in the employer's personnel and insurance department for 10 years. She stated that she and a rehabilitation nurse had visited the claimant around the time she was determined to be MMI to see what type of job she could perform. The employer had light duty jobs available at the time but the claimant did not feel she was capable of returning to work. In June or July of 1993, the claimant applied for work with the employer but there were no light duty positions available.

The hearing officer determined that the claimant's inability to find work prior to May 29, 1993, "is because the places where she applied were not hiring and this inability to find work is not the direct result of claimant's impairment." Section 408.142 provides in pertinent part that to be entitled to SIBS the employee has either "not returned to work or has returned to work earning less than 80% of the employee's average weekly wage as a direct result of the employee's impairment." The record contains sufficient evidence to support the hearing officer's determination. Whether a claimant has made a good faith effort to obtain employment is a question of fact for the hearing officer. We cited with approval in Texas Workers' Compensation Commission Appeal No. 93630, decided August 9, 1993, the discussion in 1 Montford, Barber & Duncan, A Guide to Texas Workers' Comp. Reform § 4.28 at 4-122 which states:

The employee has, before the Commission, the burden to prove that his lost or reduced earnings are a "direct result" of the employee's impairment rather than, for example economic factors unrelated to the employee's physical limitation.

The evidence is sufficient to support the inference that it was not the claimant's impairment that directly caused or resulted in her unemployment. According to claimant's testimony, she did not seek any employment where potentially available employment was advertised. The hearing officer could reasonably infer that the limited efforts to seek employment were the causative factor of the unemployment as opposed to being the "direct result of the impairment." Also, the lack of jobs on the market, as testified to by the claimant, where she looked for work during the particular qualifying period for SIBS could have been appropriately considered by the hearing officer. Too, the claimant had earlier refused to accept any light duty position with the employer. See Texas Workers' Compensation Commission Appeal No. 93531, decided August 10, 1993. Compare Texas Workers' Compensation Commission Appeal No. 93181, decided April 19, 1993. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence, Section 410.165(a), and the hearing officer makes necessary findings based upon the evidence. Section 410.168(a). Only were we to find, which we do not, that the hearing officer's findings were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be any sound basis to disturb the hearing officer's decision. In Re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge