APPEAL NO. 941273

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 22, 1994. Addressing the single issue before him, the hearing officer determined that the respondent (claimant herein) was entitled to supplemental income benefits (SIBS) for the second compensable quarter. The appellant (carrier herein) appeals, arguing that the decision is contrary to the great weight and preponderance of the evidence. The claimant replies that the decision and order of the hearing officer are correct and should be affirmed.

DECISION

We affirm.

It was not disputed that the claimant sustained a compensable bilateral carpal tunnel syndrome (CTS) injury on (date of injury). It was also agreed that the second quarterly period of SIBS in this case was January 10th through April 11, 1994. Eligibility for this quarter is established prospectively during the preceding 13 weeks. Texas Workers' Compensation Commission Appeal No. 94858, decided August 11, 1994. Section 408.143 establishes the eligibility criteria for continuing SIBS after the first quarter. The only one in dispute in this case is whether the claimant "has in good faith sought employment commensurate with [his] ability to work." Section 408.143(a)(3). *See also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104 (Rule 130.104).

The claimant submitted an "Employee's Quarterly Request for Continuation of Supplemental Income Benefits" (TWCC-49) on January 10, 1994. On this form he listed "N/A" (not applicable) in block 7 which asks for a list of the employers contacted during the previous 13 weeks. He testified that he filled out the form this way based on telephone advice from a Texas Workers' Compensation Commission (Commission) employee. He said that on October 27, 1993, his treating doctor prescribed anaprox, which he described as a non-steroid anti-inflammatory medication, for his CTS and that this medication made him drowsy. He took the medication through mid-December 1993. He reported the Commission employee as telling him that as long as a doctor would not let him do any work, he did not have to list employer contacts in block 7 of the TWCC-49. No medical evidence from the doctor who prescribed the medication was introduced into evidence.

The claimant, who was the only witness, also testified that after he finished the course of medication, he began looking again for employment through newspaper ads, cold calling potential employers and through the local college placement officer. He said he was a full time student since August 1993, carrying a 13 semester-hour course load, at school five days a week, working towards a degree in a 2 year program set up with the Texas Rehabilitation Commission (TRC). He stated that during the qualifying quarter he went to one formal interview and submitted five job applications without knowing if any jobs were available. He sought clerk positions because his doctor told him not to do any heavy lifting, not to operate vibrating equipment or perform repetitive activity with his

hands. He said potential employers never asked him about his medical condition, but only if he had relevant experience. He moved from City 1 to City 2, where his mother lived, in November 1992, because of his financial condition. He admitted he did not look for any jobs in City 1.

Based on this evidence, the hearing officer determined that the claimant made the requisite good faith effort to find employment commensurate with his ability to work and his status as a full time student. The hearing officer also made a separate finding of fact, now appealed by the carrier, that during the relevant time period, the claimant "was limited from certain kinds of work because of taking prescribed anti-inflammatories that made him drowsy."

In Texas Workers' Compensation Commission Appeal No. 93181, decided April 19, 1993, the Appeals Panel wrote at length on the concept of good faith. This intangible quality encompasses notions of honesty of purpose and absence of malice as reflected in an individual's conduct. With particular regard to the statutory requirement of a good faith effort to seek employment, we have observed that good faith requires some minimal effort commensurate with the ability to work. Texas Workers' Compensation Commission Appeal No. 94882, decided August 18, 1994. This does not mean that there is a minimal number of job applications or employment attempts that have to be made, *see* Texas Workers' Compensation Commission Appeal No. 941160, decided October 12, 1994, and the Appeals Panel has affirmed findings of good faith based on a single job application. Appeal No. 93181. *But see* Texas Workers' Compensation Commission Appeal No. 93531, decided August 10, 1993. Critical also to an evaluation of a good faith effort is a consideration of the claimant's status as a full time student enrolled under the direction of the TRC. Texas Workers' Compensation Commission Appeal No. 94119, decided March 14, 1994; Texas Workers' Compensation Commission Appeal No. 931063, decided January 4, 1994; and Texas Workers' Compensation Commission Appeal No. 93936, decided November 29, 1993.

Whether a claimant has made the necessary good faith effort to seek employment commensurate with his or her ability to work is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. Section 410.165(a) provides that the hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence. In the case now appealed, the carrier argues that there was no medical evidence to establish that the claimant was prescribed medication that made him drowsy and that, by his own testimony, the claimant continued his full time schooling while on this medication. The carrier also suggests that the claimant should have sought employment not only in City 2, where he now lives, but also in City 1 and introduced a list of potential job vacancies in both cities. It discounts the claimant's cold calling of potential employers and his attempts to find employment where no vacancies existed. The carrier thus concedes the claimant did make an effort to find work. It takes issue with the quality and effectiveness of that effort. Whether the effort was marked by good faith on the part of the claimant was for the hearing officer to decide. Given the evidence, essentially undisputed, that he did seek employment, we are

unwilling to find as a matter of law that he did not put forth a good faith effort in his job search commensurate with his ability to work or that the findings and conclusions of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, there is no basis for disturbing his decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge