

APPEAL NO. 980009

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 December 11, 1997. She (hearing officer) determined that the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the second quarter. The appellant (carrier) appeals this determination, arguing that it is not supported by sufficient evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant, while working as a carpenter, sustained a compensable left knee and right ankle fracture when his foot was run over by a forklift on _____. He reached maximum medical improvement on July 19, 1996, and was assigned a 17% impairment rating.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBS after the first compensable quarter if the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has made a good faith effort to obtain employment commensurate with his or her ability to work. See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104 (Rule 130.104). Pursuant to Rule 130.102(b), the quarterly entitlement to SIBS is determined prospectively and depends on whether the employee meets the criteria during the prior quarter or "filing period." Under Rule 130.101, "[f]iling period" is defined as "[a] period of at least 90 days during which the employee's actual and offered wages, if any, are reviewed to determine entitlement to, and amount of, [SIBS]." The employee has the burden of proving entitlement to SIBS for any quarter claimed. Texas Workers' Compensation Commission Appeal No. 941490, decided December 19, 1994. The second quarter was from October 11, 1997, to January 9, 1998, and the filing period for this quarter was from July 12, 1997, to October 10, 1997.

The single question for resolution in this case was whether the claimant met the good faith job search criterion for SIBS eligibility. The claimant was a full-time student during the filing period pursuing a degree at (University). His career goal was to be a high school teacher. He testified that he no longer drove because of his ankle condition, but took the bus to class, a process which, he said, took anywhere from 45 minutes to an hour and a half each way. He estimated that his class hours and associated schoolwork left him a maximum of 16 hours per week for work. He listed three job applications on his Statement of Employment Status (TWCC-52) submitted for the second quarter. He testified that he made one or two other job applications and made inquiries at other places, but did not list an employment contact if he did not submit an application. In some cases, he said, the employers were only taking applications at a specific time when he was

unavailable because of his classes. The type of work he sought usually involved counter sales, which he felt he could do. He said that he did not work through the university placement office because past experience suggested he could do as well on his own. He said he invested a day or two a week in looking for jobs, went to potential employers who were located along his bus route, and did not look in the newspaper for possible jobs. He said he had gone to the Texas Rehabilitation Commission in the first quarter filing period and was given tuition assistance, but did not go back during the second quarter filing period because the office was too far away.

Both parties agreed that the claimant's student status did not in itself excuse a good faith job search, but was a factor to consider in evaluating whether the job search was conducted in good faith to obtain employment commensurate with the ability to work. The hearing officer considered the number of job applications and claimant's student status in concluding that he made the required good faith job search effort. The carrier appeals this determination, contending that four job applications over three months should not be considered a good faith effort to find employment. In this case, the claimant's failure to use obvious resources such as the university placement office and the newspaper help-wanted ads and the lack of results from a claimed day or two per week search effort presents a challenge to his credibility in asserting a good faith job search. See Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. Whether the claimant made the required good faith job search was essentially a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. The hearing officer properly considered the claimant's full-time student status and considered him credible in his assertions as to how much time was left over each week for employment as well as his asserted limited mobility due to the compensable injury. We will reverse a factual determination of a hearing officer only if it is so against 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). While another hearing officer may have found otherwise, this hearing officer determined that the claimant did make a good faith job search effort in the second quarter filing period. We find the evidence sufficient to support this determination and decline to reverse it on appeal.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge