

APPEAL NO. 980038

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 4, 1997. With regard to the issue at the CCH, she (hearing officer) determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 15th quarter. The claimant appeals, seeks a reversal of the decision and argues that during the filing period for the 15th quarter of SIBS (filing period) he attempted in good faith to obtain employment commensurate with his ability to work and was unemployed as a direct result of his impairment. The (respondent) carrier responds and seeks an affirmance of the decision.

DECISION

We affirm.

The parties stipulated that the claimant sustained a compensable back injury on _____, that his impairment rating is 15% or more and that the filing period was from March 19 to June 17, 1997. The disputed SIBS criteria are whether the employee, the claimant, during the filing period, had "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" and "attempted in good faith to obtain employment commensurate with the employee's ability to work." Sections 408.142(a)(2) and 408.142(a)(4); *see also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104(a) (Rule 130.104(a)).

The claimant testified at the CCH, and recorded on attachments to his Statement of Employment Status (TWCC-52), that he attempted to obtain employment with 28 different employers during the filing period. The employers included a small automobile dealership, a hardware store, a seafood market, storage facilities, feed and tack stores, a county, a garden center, a produce market, a hotel, a convenience store and marinas. A July 16, 1997, report from the carrier's vocational case management consultant, (Ms. J), indicated she was only able to verify a few of the claimant's employment attempts. He said he attempted to find part-time work of three to four hours a day only, on the advice of a referral doctor, (Dr. B). Dr. B's May 27, 1997, Specific and Subsequent Medical Report (TWCC-64) stated he agreed with the treating doctor, (Dr. P), and the carrier-selected required medical examination doctor, (Dr. S), that the claimant should work only three to four hours per day.

The hearing officer, in the "Statement of the Evidence" portion of the decision, stated that the claimant's reliance on small employers and his unwillingness to approach larger ones played a part in her decision. She opined that larger employers would have been more likely to place him in a part-time position. She also mentioned that the claimant attempted to apply at many employers who did not have openings at all.

Whether an employee's unemployment during a SIBS filing period was a direct result of her impairment from the compensable injury is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. The determination may be based on circumstantial evidence. Texas Workers' Compensation Commission Appeal No. 960684, decided May 20, 1996. An employee is not required to show by evidence from each potential employer and by specific medical evidence that he was turned down for each position due to his restrictions. *Id.* The claimant testified at the CCH that he was unemployed during the filing period because of his physical limitations. The carrier argues that his limited job search was the reason for his unemployment.

Good faith is an intangible and abstract quality with no technical meaning or statutory definition. It encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of one's own mind and inner spirit and, therefore, may not be determined by one's protestations alone. Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. There is no specific number of job contacts which makes an employee's efforts in good faith. Texas Workers' Compensation Commission Appeal No. 960107, decided February 23, 1996.

The claimant's credibility and the credibility of his job search efforts were important in the hearing officer's determinations. As finder of fact, she is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse the hearing officer's determinations if we find that they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The determinations regarding direct result and good faith and the decision herein are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Therefore, we affirm the decision.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge