

APPEAL NO. 980061

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 with hearing officer. The appellant (carrier) and the respondent (claimant) stipulated that the filing period for supplemental income benefits (SIBS) for the seventh quarter was from May 23, 1997, through August 21, 1997. The hearing officer determined that during that filing period the claimant made a good faith effort to obtain employment commensurate with his ability to work, that during that time his unemployment was a direct result of his impairment, and that he is entitled to SIBS for the seventh quarter. The carrier appealed, urging that the decision of the hearing officer is against the overwhelming weight and preponderance of the evidence and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBS for the seventh quarter. The claimant responded, urging that the evidence is sufficient to support the decision of the hearing officer and requesting that it be affirmed.

DECISION

We affirm.

The claimant injured both shoulders and his neck on _____, doing heavy work; he was treated conservatively; and a report of a functional capacity evaluation (FCE) dated April 22, 1997, states that work hardening is recommended and that the claimant is capable of working light duty. Prior to the filing period for SIBS for the seventh quarter, the claimant began working at a convenience store but lost that job because of absences that resulted from his attendance at a work hardening program. During the filing period, the claimant received treatment for his neck, including injections. In a report dated July 2, 1997, (Dr. B), the claimant's treating doctor, stated that an FCE cleared the claimant for light to medium work, that the claimant will continue to have trouble working, and that he will have to put up with it until his neck can be repaired. During the filing period in question, the claimant sought employment with nine prospective employers. He saw some jobs advertised in the local newspaper, heard that other employers were looking for employees, and went to some prospective employers without knowing whether they were hiring. Prior to the start of the filing period and during the filing period, the claimant spoke with the manager of a convenience store. Five days after the close of the filing period, the claimant was hired to work at the convenience store and began working at the convenience store three days later.

Whether the claimant made a good faith effort to obtain employment commensurate with his ability to work and whether his unemployment is a direct result of his impairment are fact questions for the hearing officer. Texas Workers' Compensation Commission Appeal No. 941154, decided October 10, 1994. Consideration can be given to the manner in which a job search is made and timing, forethought, and diligence may be

considered in determining whether a good faith job search was made. Texas Workers' Compensation Commission Appeal No. 961195, decided August 5, 1996. In Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, the Appeals Panel rejected the contention that a certain number of job applications showed good faith and stated the following about good faith:

In common usage this term is ordinarily used to described that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation.

The Appeals Panel has affirmed a determination that the claimant made a good faith effort to seek employment and was entitled to SIBS when the claimant did not know whether some of the employers where he sought employment were hiring or made "cold calls". Texas Workers' Compensation Commission Appeal No. 950199, decided March 24, 1995. On several occasions, the Appeals Panel has said that the fact that a claimant found a job, even after the close of the filing period, strongly supports a determination that a job search was made in good faith. Also, a determination that unemployment was a direct result of the impairment from the compensable injury may be sufficiently supported by evidence that a claimant sustained a serious injury with lasting effects and could not reasonable perform the type of work he was doing at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge