

APPEAL NO. 980067

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 11, 1997. With respect to the issues before him, the hearing officer determined that claimant is not entitled to supplemental income benefits (SIBS) for the 16th and 17th compensable quarters.

Claimant generally appealed the decision that she was not entitled to SIBS for the named quarters and specifically appeals: 1) that the hearing officer failed to address the reasons for his direct result determination and 2) that the hearing officer "failed to consider Claimant's unrated psychological problems in rendering his decision." Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Carrier responds generally urging affirmance.

DECISION

Affirmed.

Section 408.143 provides 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 (AWW) 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 parties stipulated that claimant suffered a compensable (apparently a back) injury on _____, that she reached maximum medical improvement (MMI) on October 7, 1992, with a 15% impairment rating (IR), that impairment income benefits (IIBS) have not been commuted and the dates of the 16th and 17th compensable quarters. The hearing officer made determinations that the filing period for the 16th quarter was from February 15 through May 16, 1997 (all dates are 1997 unless otherwise noted), and for the 17th quarter from May 17th through August 15th.

Claimant testified how she was injured (apparently claimant did not have surgery) and how her ability to work has been limited. Claimant testified that she made some 10 job contacts during the 16th quarter filing period. The Statement of Employment Status

(TWCC-52) and attachments show 10 contacts with one potential employer being listed twice. (It is not clear whether that was a duplicate entry or if claimant actually contacted the employer twice.) In addition claimant listed the (TRC) as a job contact. Carrier's rehabilitation specialist, (Ms. N) in a letter dated March 9th also sent claimant a list of five job leads. Ms. N verified that claimant had contacted four of the employers but it appears that the contacts may have been prior to the beginning of the 16th quarter filing period (April 15th).

For the 17th quarter filing period claimant listed eight job contacts on her TWCC-52 (with two employers listed twice) and the Texas Workforce Commission (TWC). Claimant testified, and offered into evidence supporting printouts, that she had contacted the TWC on 13 occasions during the filing period. Claimant testified that she was told by a TWC worker that she would not be sent out to any jobs because of her restrictions and light-duty work status. Ms. N testified that anyone can get a TWC printout of available jobs just by going to the office. Also in evidence is correspondence dated August 15th from Ms. N to claimant listing a number of additional job leads, however these appear to fall after the 17th quarter filing period ended.

Also in evidence is a note dated July 21st from (Dr. B) taking claimant off work (no reason given). An affidavit, and claimant on cross-examination, appear to indicate that on some, or all, of claimant's job contacts she made herself available only on Wednesdays and Fridays during the day. Claimant also offered into evidence reports dated September 8th and November 6th, from a psychiatric health service which state that claimant is "disable" "unable to return to the workforce" and "not capable of returning to her gainful employment." The September 8th report references a 23-hour observation admission "back in July 24 of this year." First we note that both reports are after the filing period in question and only one makes a reference to a hospitalization or treatment during one of the filing periods. Further, the reports make, at most, a tenuous connection between claimant's psychiatric care and her impairment from the compensable injury.

The hearing officer made determinations that claimant "did not make good faith efforts to look for work commensurate with her ability" and that "Claimant failed to meet her burden and prove that her unemployment during the qualifying [filing] periods for the sixteenth and seventeenth compensable quarters was a direct result of her impairment." Claimant in her appeal challenges the latter determination, contending that the hearing officer "does not address the reasons for said conclusions [on direct result]." Claimant goes on to speculate that the hearing officer's "decision is based on economic factors of the community" although there was no evidence or argument presented on that point or any point involving direct result. The hearing officer correctly made a factual determination on direct result as required by the 1989 Act. The hearing officer determined that claimant, who has the burden of proving direct result (Appeal No. 941490, *supra*) failed to do so. No evidence or testimony was presented on direct result, other than perhaps the psychiatric reports outside the filing periods. Most of the testimony and evidence deals with claimant's

good faith job search. We find the hearing officer's determination that claimant failed to meet her burden on this point supported by the evidence.

Claimant argues that she "made a limited search" during the filing periods because of "mounting pressures of attempting to look for work" and that she was "ultimately unable to look for employment for a significant period of time during the [filing] period for the seventeenth compensable quarter." The significant period of time appears to be the 23-hour observational admission referred to in the September 8th psychiatric report and claimant's testimony. Certainly, the hearing officer heard claimant's testimony, was able to observe claimant at the CCH, and we note, the hearing officer specifically indicated that he did not find claimant's testimony persuasive. While not specifically referencing the psychiatric reports, the record indicates that the hearing officer was certainly aware of those reports but apparently gave them little, if any, weight.

As we have stated many times Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence. It was for the hearing officer, as trier of fact, 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). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and consequently the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge