

APPEAL NO. 980083

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 October 31, 1997. With regard to the issues at the CCH, he (hearing officer) determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 14th and 15th quarters. The claimant appeals, seeks a reversal of the decision and argues that during the filing periods for the 14th and 15th quarters of SIBS he attempted in good faith to obtain employment commensurate with his ability to work. The respondent (carrier) responds and seeks an affirmance of the decision. Neither party appeals the hearing officer's finding of fact that the "[c]laimant failed to meet his burden of proof that his unemployment during the filing periods for the fourteenth and fifteenth quarters was a direct result of his impairment." Therefore, that finding became final by operation of law. Section 410.169.

DECISION

We affirm.

The hearing officer fairly summarizes the facts in the decision and we adopt his rendition of the facts. We discuss only those facts necessary to our decision. The parties stipulated that the claimant sustained a compensable back injury \_\_\_\_\_, that his impairment rating is 15% or more, that the filing period for the 14th quarter of SIBS was from March 20 to June 18, 1997, and that the filing period for the 15th quarter of SIBS was from June 19 to September 17, 1997. An October 18, 1996, report from the claimant's treating doctor, (Dr. B), indicated that he was restricted from lifting over 45 pounds. The disputed SIBS criterion is whether the employee, the claimant, during the filing period, "attempted in good faith to obtain employment commensurate with the employee's ability to work." Section 408.142(a)(4); see *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104(a)(2) (Rule 130.104(a)(2)).

The claimant testified at the CCH, and recorded on attachments to his Statement of Employment Status (TWCC-52), that during the filing period for the 14th quarter of SIBS he attempted to obtain employment with 36 different employers. The employers included restaurants, a filing station, maintenance services, retailers, a casino and a university. He testified that during the filing period for the 15th quarter of SIBS he attempted to obtain employment with about 30 different employers of a variety similar to those he visited during the previous quarter's filing period. He said he travels to potential employers with a group of Dr. B's patients that Dr. B organized. The carrier's vocational rehabilitationist, (Mr. C), testified at the CCH that he investigated the claimant's job search efforts. He said that of the employers the claimant said he contacted during the filing period for the 14th quarter of SIBS, 11 had received an application, 13 had not received an application and 12 could not be verified. He said that of the employers the claimant said he contacted during the filing

period for the 15th quarter of SIBS, 13 had received an application, four had not received an application and 13 could not be verified. Mr. C opined that the claimant could have found a job had his job search been more vigorous.

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 make an employee's efforts in good faith. Texas Workers' Compensation Commission Appeal No. 960107, decided February 23, 1996.

The contested case hearing officer, as finder of fact, 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, 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). 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 that determination if we find that 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). The good faith determination and the decision herein is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and, therefore, we affirm.

Christopher L. Rhodes  
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.  
Chief Appeals Judge

Gary L. Kilgore  
Appeals Judge