

APPEAL NO. 980095

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 30, 1997, a contested case hearing was held. He (hearing officer) determined that appellant (claimant) had not attempted in good faith to obtain employment commensurate with her ability and concluded that supplemental income benefits (SIBS) were not due for the sixth compensable quarter. Claimant asserts that she sought work when she was able, referring to her pain from the injury and said she made 12 job contacts in the filing period. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) at the time she fell down injuring her back on \_\_\_\_\_. She described her job as moving material or segments of clothing between sewing operations on carts, which required lifting stacks of clothing. The decision reflects that the parties stipulated claimant had a 16% impairment rating, did not commute benefits, and that the filing period for the sixth quarter in question began on July 3 and ended on October 1, 1997.

While some medical reports of (Dr. G) in 1997 commented that claimant was completely "disabled," these documents showed that Dr. G was taking into account claimant's education, training, and communication skills in reaching that conclusion. A functional capacity evaluation of January 6, 1997, had showed that claimant could do sedentary work, and Dr. G did not disagree directly with that evaluation but questioned whether claimant could ever find such work. The claimant sought SIBS for the sixth quarter, not on the basis of an inability to medically do any work at all, but on the basis that she had attempted in good faith to find work. She listed seven employers contacted within the filing period, and at the hearing she testified to having contacted five more employers, but then named only four employers.

Claimant sought work with the seven employers listed from July 18 to August 6, 1997. As stated, the filing period began on July 3rd, so two weeks after it started claimant sought work for less than three weeks. Thereafter, her attempt to find work involved four or five employers she did not list and could recall very little information about, all contacted in September 1997. Claimant said that she was in significant pain during the period she did not look for work. She also agreed that she did not consult the newspaper but said it was because she could not afford to buy a paper. She went to the Texas Workforce Commission but said she was told to check the ads for employment on television.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. Whether or not a claimant has attempted in good faith to find work is a factual determination that will not be disturbed on appeal unless it is against the great weight and preponderance of the evidence. The hearing officer found that claimant did not spend sufficient time or energy seeking work. A finding that addresses factors of time and energy is consistent with a criterion for payment of SIBS that calls for a good faith attempt to find work. While numbers alone are not the criteria for good faith, a fact finder may consider the scope of the search in determining good faith, even though a claimant's education and training may be considered in determining the amount of organization or planning that could be expected in the attempt. The hearing officer basically did not find that claimant went about her attempt in a deficient manner, except as to her failure to provide information about the last four or five contacts, just that she did not do enough, consistent with her circumstances. The evidence sufficiently supports the determination that the claimant did not show that she attempted in good faith to obtain employment.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta  
Appeals Judge

CONCUR:

Alan C. Ernst  
Appeals Judge

Judy L. Stephens  
Appeals Judge