

APPEAL NO. 980111

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 on December 16, 1997, with hearing officer. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury on _____, and that the filing period for supplemental income benefits (SIBS) for the 12th quarter began on July 5, 1997, and ended on October 2, 1997. Concerning the filing period for the 12th quarter, the hearing officer determined that the claimant is a college student, but did not attend classes during the majority of the filing period; that he applied for nine jobs which were within his restrictions; that applications for two of the jobs were made during the last 30 days of the filing period, that he did not in good faith seek employment commensurate with his ability to work, that his unemployment was due to his failure to seek work within his restrictions, and that his unemployment was not a direct result of the impairment from the compensable injury. She also determined that the claimant is not entitled to SIBS for the 12th quarter. The claimant appealed, stating his disagreement with determinations of the hearing officer and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to SIBS for the 12th quarter. A response from the carrier has not been received.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a summary of the evidence and only a brief summary will be repeated in this decision. The claimant testified that he had 54 hours of college credits prior to the injury, that he again started taking college courses in the spring semester of 1996, that he took classes in computer programming, that he did not attend classes during the 1997 summer session, that he started taking four classes in late August 1997, and that he dropped one class in September and another in October. He stated that a September 1992 CT scan showed a herniated disc in his back; that he has not had surgery; and that his doctor told him not to lift over 25 pounds and provided him with limitations concerning sitting, standing, walking, and squatting. The claimant said that he sought employment with 11 prospective employers during the filing period and provided information about the job searches with each of the prospective employers.

We have held that 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 from the compensable injury are fact questions for the hearing officer to determine from the evidence. Texas Workers' Compensation Commission Appeal No. 941154, decided October 10, 1994. 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 describe 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 burden is on the claimant to prove by a preponderance of the evidence that he is entitled to SIBS. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995. 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). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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. In her Decision and Order, the hearing officer stated that the claimant's testimony was conflicting, discussed one inconsistency, commented on his effort during the last 30 days of the filing period, and said that she did not find the claimant to be a credible witness.

An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). 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 hers. 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:

Thomas A. Knapp
Appeals Judge

Christopher L. Rhodes
Appeals Judge