APPEAL NO. 980140
FILED MARCH 9, 1998

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 January 7, 1998. With regard to the issues at the CCH, she (hearing officer) determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 11th quarter. The claimant appeals, seeks a reversal of the decision and argues that during the filing period for the 11th quarter of SIBS (filing period) 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. The hearing officer made a finding of fact that during the filing period the claimant's underemployment was a direct result of his impairment. That finding is not appealed and, therefore, 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 her rendition of the facts. We discuss only those facts necessary to our decision. There is no dispute that the claimant sustained a compensable back injury on _____, that his impairment rating is 15% or more and that the filing period was from July 22 to October 20, 1997. 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)).

According to a January 16, 1997, functional capacity evaluation, the claimant was limited to "light-medium" jobs and had a 35-pound lifting limit. He testified at the CCH that during the filing period he earned $17.20 selling long-distance telephone service. He said he sought employment with several machine shops but was not offered employment. He said he was informed of positions by consulting acquaintances in machine shops and by reading the newspaper classified advertisements. He could not recall the exact dates of any of his employment contacts. He enrolled in a computer repair correspondence course with the aid of the Texas Rehabilitation Commission and started the course on October 20, 1997.

The hearing officer, in the "Statement of the Evidence" portion of the decision, stated that the claimant started taking college classes at the end of the filing period. She acknowledged that his educational efforts could help establish that he attempted to obtain employment commensurate with his ability to work but recognized that the good faith requirement normally covers the entire filing period in issue. *See* Texas Workers' Compensation Commission Appeal No. 972507, decided January 7, 1998; Texas Workers'

Compensation Commission Appeal No. 971644, decided October 6, 1997; Texas Workers' Compensation Commission Appeal No. 960999, decided July 10, 1996; Texas Workers' Compensation Commission Appeal No. 960964, decided June 26, 1996; and Texas Workers' Compensation Commission Appeal No. 951832, decided December 15, 1995. The hearing officer referred to the claimant's job search effort prior to enrolling in the class as "minimal."

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 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). In the case under review, the hearing officer did not err in considering the claimant's conduct during the entire filing period and determining that he did not attempt in good faith to obtain employment commensurate with his ability to work. 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). We will reverse a hearing officer's decision if we find that it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). 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:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge