

APPEAL NO. 980144
FILED FEBRUARY 26, 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 December 5, 1997. The issue at the CCH was whether the appellant, who is the claimant, was entitled to supplemental income benefits (SIBS) for the thirteenth, fourteenth, and fifteenth quarters of eligibility.

The hearing officer held that the claimant failed to prove that his unemployment for the three quarters in issue was the direct result of his impairment, and further that he did not make good faith efforts to look for work commensurate with his ability to work during any of the disputed filing periods. Claimant was found not entitled to SIBS for any of the three quarters.

The claimant appeals, arguing that these findings are so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. The carrier responds that the appeal does not clearly and concisely rebut the hearing officer's decision, and the Appeals Panel therefore has no jurisdiction. The carrier asks that the decision be affirmed.

DECISION

Affirmed.

Although minimal, the appeal invokes our jurisdiction but only as a review of the weight of the factual sufficiency of the evidence.

Claimant sustained a knee injury on _____, and sustained a torn anterior cruciate ligament in his right knee. He had surgery, and although he generally stated that his continuing problems involved swelling and numbness of the knee, he did not assert he was unable to work but agreed that he could work. Claimant used a cane and a knee brace. He agreed he had been released to work on the sedentary level. The filing periods for the quarters in issue ran from February 15 through November 15, 1997.

All three of claimant's Statement of Employment Status (TWCC-52) forms for the quarters in question have lists of employers attached whom claimant testified he contacted. He stated both that he obtained leads through the newspaper, and from friends. Claimant said he personally visited each company, and would be told they were not hiring. He agreed on cross examination that most of the jobs were outside his physical work restriction level and were closer to what he used to do. He placed no applications. He had one interview during the filing period for the fourteenth quarter with a Mexican restaurant and said that when the interviewer saw his knee brace, he told him they had no job for him.

The claimant said he contacted the employers in order to fulfill the SIBS job search requirement but also said he sincerely was trying to get back into the work force.

The hearing officer stated in his decision that he did not find the claimant's testimony to be persuasive. An April 30, 1997, report from claimant's treating doctor noted that he had been walking a lot in connection with "getting five signatures a day where he has been applying for jobs." The doctor signed a statement on May 6, 1997, asking that claimant limit his walking in connection with applying for jobs.

There are two eligibility criteria that must be met on a quarterly basis to qualify for SIBS, set out in Section 408.142(a): that the employee "(2) has not returned to work or has returned to work earning less than eighty percent of the employee's average weekly wage as a direct result of the employee's impairment; and (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work." The hearing officer stated that he did not regard the claimant's testimony as persuasive on these issues, and this was his responsibility as sole judge of the evidence. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determinations is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge