APPEAL NO. 980179
FILED MARCH 13, 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 30, 1997, with hearing officer. The sole issue was:

> 1. Is the [Appellant] Claimant entitled to Supplemental Income Benefits [SIBS] for the fifth compensable quarter from April 25, 1997 through July 24, 1997 and, if so, on what date do the [SIBS] begin to accrue?

The hearing officer determined that claimant was not entitled to SIBS for the fifth compensable quarter because he had not made a good faith effort to obtain employment commensurate with his ability to work and that his unemployment was not a direct result of his impairment pursuant to Section 408.143.

Claimant appeals the determinations on good faith and direct result citing claimant's compensable psychiatric fear of chemicals, contending the "nature of this injury [fear of chemicals caused by a chemical burn to the foot] together . . . in actively pursuing the TRC [Texas Rehabilitation Commission] program underlines his good faith efforts to attempt to find employment commensurate with his abilities, subject to the delusional disorder from which he suffers." Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds urging affirmance.

DECISION

Affirmed.

The claimant did not personally appear at the CCH and the only stipulation was the dates of the fifth compensable quarter as set out in the issue. The hearing officer in the official notice portion of his decision stated:

> The hearing officer took official notice of the prior Decisions and Orders entered into the claim file and of the Appeal[s] Panel Decision 970570 [decided May 13, 1997, an unpublished decision] to establish jurisdictional and venue facts, the nature and extent of Claimant's compensable injury, the Claimant had a 15% impairment rating and did not elect to commute any portion of Impairment Income Benefits.

The facts are set out in that decision, which involved the second and third compensable quarters of SIBS and which claimant represents have further been appealed to the District Court in (County. 1) (Claimant also represents that the decision for the fourth compensable

quarter is currently pending before another hearing officer.) The hearing officer in an unchallenged determination, found that the "entitlement period"[1] was from January 26, 1997, through April 24, 1997, whereas the carrier, at the CCH, referred to the period as being between January 24, 1997, and April 24, 1997.

Claimant sustained a chemical burn to his foot on _____, and subsequently developed a compensable psychological fear of chemicals. (Dr. S), in a report dated December 27, 1996, expresses the legal conclusion that claimant's "pursuit of retraining at T.R.C. constitute[s] a 'good faith effort' on his part to return to work." Another report dated September 13, 1996, was discussed in our decision in Appeal No. 970570, *supra*. The hearing officer, in an unappealed factual determination found that claimant's psychological injury and foot injury did not limit him from employment during the applicable filing period except from working in an environment with exposure to chemicals, and that claimant was able to work full time during the applicable filing period. It is undisputed that claimant began a training course under TRC auspices as a truck driver and that upon completion of the course obtained full-time employment on July 1, 1997, as a truck driver earning more than 80% of his preinjury average weekly wage. Claimant's position at the CCH, on appeal and in Appeal No. 970570, *supra,* was that:

> As a matter of policy, and to effect the remedial nature of the Texas Workers Compensation Act [1989 Act], a Claimant suffering from psychiatric injury, who is making a good faith effort to rejoin the workforce, without actively applying for available jobs during the pendency of that retraining, should maintain his or her entitlement to SIBs because the active retraining itself, coupled with the psychiatric illness, constitutes an active search for employment within the confines of the illness.

We essentially rejected that same argument in Appeal No. 970570, noting language from Texas Workers' Compensation Commission Appeal No. 93936, decided November 29, 1993, that attendance in a retraining program can be considered in evaluating the claimant's good faith efforts to attempt to find employment commensurate with the employee's abilities (which may include availability for work), but it did not remove the claimant's responsibility to make a good faith attempt to find some employment. Similarly, we rejected the notion that a "psychiatric illness" of this nature where claimant's only restriction is that he not work around chemicals, entitles him to a special status or that the requirements of Section 408.143 should not be applied to him.

We note that claimant did not begin his retraining until February 3, 1997, that there was no evidence how many hours a week claimant spent in retraining, or what opportunities there might have been for working while in the retraining program. Further,

[1]Carrier refers to the period as the "qualifying" period. The 1989 Act and Texas Workers' Compensation Commission administrative rules call it a "filing" period, not a "qualifying" or "entitlement" period.)

there was no evidence when the retraining ended or when claimant began making applications for employment. Even accepting claimant's representations that he had obtained a full-time truck driving job, there simply was no evidence as to what claimant was doing during the January 24 to April 24, 1997, time frame other than he was in "retraining."

Although the issue referred to an accrual date and the parties argued that date at the CCH, the hearing officer made no determinations on that point, and, in that, we are affirming the determination of nonentitlement for the fifth compensable quarter, the accrual date is not an issue, and has not been appealed.

Under these circumstances, we cannot say that the hearing officer's determinations were 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).) Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge