

APPEAL NO. 980184
FILED MARCH 6, 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 5, 1998, with hearing officer. 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 17th quarter. The claimant appeals, seeks a reversal of the decision and argues that during the filing period for the 17th 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 unemployment 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 neck and back injury on _____, that his impairment rating is 15% or more and that the filing period was from June 19 to September 17, 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)).

The claimant testified at the CCH that his treating doctor released him to return to work in September 1992. He said the first time he sought employment during the filing period was July 30, 1997. He offered no explanation for why he waited until that time to start his job search. Attached to his Statement of Employment Status (TWCC-52) were 20 job applications dated from July 30 to September 17, 1997. The hearing officer noted, in the "Statement of the Evidence" portion of the decision, that the claimant's efforts from July 30 to September 17, 1997, were in good faith but he did not attempt to obtain employment commensurate with his ability to work during the filing period because he made no effort to seek employment from June 19 to July 29, 1997.

The claimant argues that the hearing officer erred, as a matter of law, since he did seek employment for seven weeks of the 13-week filing period. While the hearing officer opined that the claimant attempted to obtain employment commensurate with his ability to work for over half of the filing period, she 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 claimant cites our decision in Texas Workers' Compensation Commission Appeal No. 960947, decided July 1, 1996, for the proposition that it was error for the hearing officer to find a lack of good faith based on the claimant's job search for the last half of the filing period only. We note the facts in that decision are analogous to the case under review but we stress that our decision in that case affirmed the hearing officer. However, the fact that another finder of fact may have come to a different conclusion is not error as a matter of law. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

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 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:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge