APPEAL NO. 980193
FILED MARCH 13, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On October 31, 1997, a hearing was held in providing a decision that was dated as signed on December 21, 1997. This decision is shown to have been distributed to the parties on January 15, 1998. Appellant (carrier) asserted that it was error for the hearing officer to conclude that claimant had no ability to work, that her job search did not amount to an attempt in good faith to find work, citing both the number and type of jobs sought, and that unemployment was not shown to be a direct result of the impairment. Claimant replied that the decision awarding supplemental income benefits (SIBS) for the sixth compensable quarter should be upheld.

DECISION

We affirm.

Claimant did not describe how her injury occurred until the hearing officer queried her. Through an interpreter, she only related that she operated a machine, that she had to "pull" the machine, and that she did this every day. She felt pain in her right hand and then her left and has had surgery to both hands.

The parties stipulated that on _____, claimant sustained a compensable injury, that she had an impairment rating of 15% "or greater," and that the sixth compensable quarter began on April 21 and ended July 20, 1997. (Therefore, the filing period in question would have begun approximately 90 days before April 21st, which would be approximately January 21, 1997.) There was no evidence or stipulation as to commutation of benefits, but there was also no appeal addressing commutation.

The hearing involved a certain amount of argument concerning what the medical evidence indicated about claimant's ability to work. Claimant's attorney at times indicated that claimant actually had no ability to work. The evidence from claimant clearly showed that she felt she could try to work, although she had severe limitations as a result of her upper extremity injuries. Both (Dr. B) and (Dr. J), who claimant has seen in the relevant filing period, indicate that her restrictions are severe (Dr. J uses that term; Dr. B states that she is unable to use the right hand, but has minimal use of the left hand). Carrier provided medical evidence from 1993 which indicates that claimant "can probably perform work that requires no frequent elbow flexion and repeated wrist activities." Carrier also provided a document from (C R C) dated June 24, 1997, indicating that claimant's lawyer would not make her available for their services.

As stated, the claimant testified that she looked for work in the filing period. She listed six employers as attachments to her Statement of Employment Status (TWCC-52) which was used to request SIBS. While the carrier pointed out through cross-examination

that these employers were contacted within a limited amount of time, with no applications filed in March or April 1997, claimant also testified that she contacted several other employers she did not document during the period. She said that she inquired at several "help wanted" places, but was not hired. She could not remember if any of these inquiries had been made in March. On cross-examination claimant was asked if she could wash dishes (one of her documents indicated such a job was sought) if she had been offered the job, and she answered, "I would try to do it," adding "I always try to find a job." Other jobs she listed as having sought in the filing period included cleaning in a dress store, a fabric store, food stores and a dry cleaning establishment.

Claimant also testified that her hands are still painful and she can do nothing with her right hand. She cannot do housework or use a computer. She has little English-speaking ability. She acknowledged that she is not supposed to lift, either. Claimant's attorney indicated that (C R C) is the only service that he prohibits his clients from using and stated that carrier was told he would not deny another service if one was used.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She could conclude that claimant had very severe restrictions which probably would make finding an appropriate job extremely unlikely. *See* Texas Workers' Compensation Commission Appeal No. 970890, decided June 27, 1997, in which a doctor said that to look for work would be "futile" because the restrictions were so great, but in which a claimant nevertheless had to attempt in good faith to find work. With restrictions including no use of one hand and no lifting, and with claimant being unable to converse in English, the claimant is left in a quandary as to attempting to find work that she can do without appearing to be attempting to get a job for which she is not capable. Claimant's comment that she would try any job offered could certainly have been given weight.

The hearing officer could also consider that claimant's job search included more than the six employers she listed based on her testimony. She could consider that her daughter recorded the information about the job applications made, not the claimant herself. The hearing officer noted that claimant was credible. When the question of attempt in good faith to find work in this case is determined based on a job search, rather than a complete inability to do any work, the claimant's experience, skills (or lack of them), education, and language restrictions may also be considered as factors in regard to the size of the pool of prospective jobs that is available to a claimant. In these circumstances, in which the claimant is only able to do some limited work, and the pool of prospective jobs is limited by these other factors, we believe that the evidence is minimally sufficient to show a good faith effort to find work. The medical evidence sufficiently supports that claimant could not return to her job at the time of injury, repetitious machine work, because of her impairment so the unemployment is a direct result of the impairment.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

CONCURRING OPINION:

I concur and write separately to point out the advice of Judge Kelley in her concurring opinion in Texas Workers' Compensation Commission Appeal No. 951999, decided January 4, 1996, which I believe might be appropriate here:

> It is incumbent upon injured workers to realize that benefits do not last forever under the Act, and to make concrete plans to reenter the job force. SIBS is intended to provide a safety net for the gradual and limited reentry into the job force. Because the job search requirement is geared to the worker's post-injury capabilities, it may be that there are only a few jobs, or only part-time jobs, that the injured worker can realistically perform. The fact that such jobs may be few, however, does not mean that they need not be sought. To this end, injured workers must work with their doctors to solicit recommendations of what they can do, not what they are unable to do. If I were asked to affirm a decision for SIBS in the future, I would expect the record to include evidence that claimant has worked closely with her doctor to actually reenter the job force, that she has sought and followed recentrecommendations about her ability to perform any work (not just the tasks she did on her previous job), and that she has searched for work within her restrictions.

Stark O. Sanders, Jr.
Chief Appeals Judge