

APPEAL NO. 980212  
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 12, 1998, with hearing officer. With regard to the issue at the CCH, he (hearing officer) determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the fourth quarter. The claimant appeals, seeks a reversal of the decision and argues he attempted in good faith to obtain employment commensurate with his ability to work during the filing period for the fourth quarter of SIBS (filing period). The respondent (carrier) responds and seeks an affirmance of the decision. The hearing officer made a finding of fact that claimant's unemployment during the filing period 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 his rendition of the facts. We discuss only those facts necessary to our decision. The parties stipulated that the claimant sustained a compensable neck injury on \_\_\_\_\_, that his impairment rating is 15% or more and that the filing period was from May 30 to August 28, 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 during the filing period he attended college classes, with the aid of the Texas Rehabilitation Commission (TRC). He said the classes met Monday through Friday, from 8:00 a.m. to 12:00 p.m. He argues that the hearing officer should have placed greater weight on his class attendance. We disagree. An employee's college course or trade school attendance at TRC's referral is a factor a hearing officer may consider, along with other factors, to determine whether he has met the good faith criterion. Texas Workers' Compensation Commission Appeal No. 931019, decided December 17, 1993; *see also* Texas Workers' Compensation Commission Appeal No. 961578, decided September 20, 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 that is to be given the evidence. Section 410.165(a); Rule 142.2(9).

The claimant also testified that he approached 16 employers regarding employment. Reports from the carrier's investigator, (Mr. A), indicated that he was not able to verify any of the claimant's job contacts. The claimant objected at the CCH and complains on appeal that Mr. A's reports contained hearsay. The hearing officer overruled the claimant's

objection and admitted the reports. In CCHs, "[c]onformity to legal rules of evidence is not necessary." Section 410.165(a). The hearing officer is authorized to rule on the admissibility of evidence presented to the CCH. Rule 142.2(8). We review the hearing officer's admission of evidence under an abuse of discretion standard. We conclude that the hearing officer did not abuse his discretion in admitting Mr. A's reports. The hearing officer, in the "Statement of the Evidence" portion of the decision, states that he placed more weight on Mr. A's report than on the claimant's testimony and that the claimant was not credible. The claimant complains on appeal that it was error to place more weight on a report than on his live testimony. We disagree. The hearing officer is the sole judge of the credibility of the evidence presented at the CCH. Section 410.165(a); Rule 142.2(9).

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 makes an employee's efforts in good faith. Texas Workers' Compensation Commission Appeal No. 960107, decided February 23, 1996.

In the case under review, the hearing officer did not err in considering the claimant's TRC cooperation, class attendance and job contacts along with Mr. A's reports to determine 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 so as to be clearly wrong or manifestly unjust and, therefore, we affirm.

Christopher L. Rhodes  
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.  
Chief Appeals Judge

Tommy W. Lueders  
Appeals Judge