

APPEAL NO. 980247  
FILED MARCH 25, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 13, 1998, a hearing was held in (City 1), Texas, with (hearing officer) presiding. He determined that respondent (claimant) is entitled to supplemental income benefits (SIBS) for the 10th and 11th compensable quarters, that claimant's average weekly earnings during the filing periods in question were \$150.00 and \$143.00 respectively, and that claimant did not waive SIBS for the 10th quarter. Appellant (carrier) asserts that claimant provided no medical evidence explaining why she could only work approximately 30 hours a week; that she also restricted her job search so as not to have shown an attempt in good faith to find work; and that claimant did not show that her underemployment was a direct result of the impairment. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_, when she caught her right hand in a machine that halves chickens. She testified that she used her right hand to slice halves of chicken into pieces and can no longer use that hand in a normal way; the record indicates that she showed the hearing officer that she can no longer close her right hand to make a fist and testified that she could not grip a knife so as to slice chicken as she once was able to do. The parties stipulated that claimant's 1993 right hand injury was compensable, that her impairment rating (IR) was 18%, that her average weekly wage was \$322.80, that no benefits have been commuted, that the filing period for the 10th quarter began on April 10, 1997, and that the filing period for the 11th quarter began on July 10, 1997.

The record does not include medical evidence as to treatment claimant is currently receiving or limitations that she has been instructed to follow. Even without medical evidence, the demonstration of lack of movement of her right hand for the hearing officer, together with the stipulation as to the IR, sufficiently supports the findings of fact that claimant's right hand is permanently impaired and that she can no longer do the work that she did at the time of the accident because of the injury. Therefore, the determination that claimant's underemployment is a direct result of the impairment is sufficiently supported by the evidence. See Texas Workers' Compensation Commission Appeal No. 960008, decided February 16, 1996, and Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996.

While carrier asserted error in findings of fact that addressed the approximate number of hours claimant worked in the two filing periods (30 hours), the average earnings in the two periods (\$150.00 and \$143.00), and the absence of a waiver by claimant to seek SIBS for the 10th quarter, carrier did not indicate what, if anything, was

incorrect about the figures set forth and did not offer any other figures as being more accurate. The hours and figures set forth in those findings of fact and this paragraph are sufficiently supported by the testimony of claimant and the records of the current employer, (employer 2). Similarly, while there was a contention that claimant had stated at a benefit review conference that she would not proceed in regard to the 10th quarter, there was no written agreement in evidence; with claimant indicating that she did not say she would withdraw her application for the 10th quarter, the evidence was sufficient for the hearing officer to determine that claimant had not waived her entitlement to SIBS for the 10th quarter.

Claimant testified that her hours of work varied for employer 2 because of the scheduling of work dictated by the employer. While she did not testify, and did not provide any medical evidence, that she was restricted to an average of approximately 30 hours of work per week, she stated that she continued to look for full-time work in both filing periods while working for employer 2.

Claimant stated that during the filing period for the 10th quarter she sought work with seven employers. These included positions sought as a cashier at three employers, a nursing home position, a kitchen employee at a medical center, cleaning, and a restaurant position. During this testimony, claimant said that her hand will not allow her to pick up containers that weigh up to 50 pounds as she did when she worked for employer.

During the filing period for the 11th quarter, claimant testified that she looked for work with 10 employers and contacted the Louisiana equivalent of the Texas Employment Commission. She described the jobs sought as including a hospital, two drug stores, a casino, a light manufacturing business, two general stores, a plumbing service business, and a grocery store. Claimant denied that her diabetes was a significant factor in her choice of employers with whom to seek work; she indicated that she sought work both in a small town near her home and in the larger city of (City 2), Louisiana. She indicated that her search was limited to some extent by the time she was at work each week with employer 2 and by transportation problems.

Carrier states in its appeal that claimant had no medical evidence to show any restrictions on her ability to work. However, the record shows that the claimant demonstrated her ability to use her hand and testified about the use of that hand (see Texas Workers' Compensation Commission Appeal No. 972329, decided December 22, 1997); in addition, the case under review did not consider whether claimant had no ability to do any work of any kind. As stated, this claimant was working throughout both filing periods in question approximately 30 hours a week. Unlike Texas Workers' Compensation Commission Appeal No. 960480, decided April 24, 1996, in which a claimant worked less hours than his doctor allowed and did not continue to seek more hours of employment, this claimant has not contended that she has been limited in the number of hours a week that she can work and has sought full-time work in each filing

period. Whether or not her effort constituted a good faith attempt to find work is a question of fact for the hearing officer to determine. See Section 410.165.

Whether a claimant exercises good faith depends on all the circumstances of the case. The criterion for good faith is not that of a reasonable woman, but is personal to the claimant who is seeking SIBS. For instance, a claimant who sought work through mailing applications nationwide for truck-driving jobs was found to have shown good faith. He had attention deficit syndrome (not a part of the compensable injury or the impairment) and for that individual good faith could be found from his actions. See Texas Workers' Compensation Commission Appeal No. 950471, decided May 10, 1995.

While claimant did not describe any job she sought as including heavy labor, she sought a variety of jobs in both filing periods and had shown some evidence of her limited use of the right hand through the 18% IR and through her demonstration and testimony. See Appeal No. 972329, *supra*. The evidence did not require the hearing officer to find that claimant had unduly limited her job search when she sought full-time work. The determinations that claimant attempted in good faith to obtain a job that would provide, in effect, full-time work are sufficiently supported by the evidence.

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:

---

Robert W. Potts  
Appeals Judge

---

Alan C. Ernst  
Appeals Judge