

APPEAL NO. 980291  
FILED MARCH 30, 1998

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (City), Texas, on January 15, 1998, with (hearing officer) presiding as hearing officer. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the first quarter. Claimant appealed, asserting that she acted in good faith in making her job search. The respondent self-insured ("carrier" herein) responds that sufficient evidence supports the hearing officer's determinations and requests affirmance.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that claimant was not entitled to SIBS for the first quarter. Claimant contends that her good faith was shown by the fact that she looked in the newspapers, visited ten employers, and went to the Texas Workforce Commission (TWC) seeking work. She also maintains that she was required to seek only that work which was within her restrictions.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the impairment income benefits (IIBS) period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly wage (AWW) as a direct result of the impairment; (3) not elected to commute a portion of the IIBS; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. Good faith is a subjective notion and generally means honesty of purpose, freedom from intent to defraud and being faithful to one's obligations. Texas Workers' Compensation Commission Appeal No. 941293, decided November 8, 1994. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that she injured her back at work on \_\_\_\_\_, and that she underwent surgery in May 1996. She said that, during the filing period in question, she looked for work four-to-five hours per day. Claimant listed ten potential employers on her Statement of Employment Status (TWCC-52). She said she looked in the newspapers for work and called employers about openings. She said she went to ten employers seeking work and that she chose these ten based on the fact that they had advertised for employees or they had a sign out seeking employees. She said she had worked in the past as a lab technician but that she sought work as a secretary or cashier. She said that she actually left an application with six of the ten potential employers, that each of the six said she could leave an application and that they would call if they needed anyone, and that she did not hear back from any of them. Claimant said she went to the TWC seeking work but that they did not have any positions that she could apply for listed. There was no medical evidence in the record. Claimant testified that her restrictions were no excessive bending, standing, or lifting. Carrier's adjuster, who the hearing officer stated appeared credible, testified that she contacted some of the employers claimant listed on her job contact sheets and that they all said they did not have any openings at the time that claimant was seeking work.

The parties stipulated that: (1) claimant sustained a compensable back injury while working as a lab technician on \_\_\_\_\_; (2) claimant's IR was over 15%%; and (3) claimant did not elect to commute her impairment income benefits (IIBS). It was undisputed that claimant was unemployed during the filing period. The first quarter was from October 8, 1997, to January 6, 1998. The filing period for the first quarter was the 90 days before the first quarter.

In this case, the hearing officer heard claimant's and the adjuster's testimony about claimant's job search. The hearing officer decided what weight to give to the witnesses' testimony. Our review of the record does not indicate that the hearing officer's good faith and direct result determinations regarding the first quarter are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. Therefore, there is no basis for disturbing her decision on appeal.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Alan C. Ernst  
Appeals Judge