APPEAL NO. 980292
FILED MARCH 30, 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 was held on August 1, 1997, in (City), Texas, with (hearing officer) presiding as hearing officer. With respect to the issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 16th quarter. In his appeal, the claimant essentially argues that the determinations that he did not make a good faith job search in the relevant filing period and that he did not establish that his unemployment was a direct result of his impairment are against the great weight and preponderance of the evidence. In its response, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____, in the course and scope of his employment, that he was assigned an impairment rating of 15% or greater, and that he did not commute his impairment income benefits. The parties stipulated that the 16th quarter ran from October 25, 1997, to January 23, 1998. Therefore, the relevant filing period ran from approximately July 26 to October 24, 1997.

The claimant testified that his treating doctor, Dr. W, told him he will not release the claimant to return to work until he completes the full course of the therapy program to which Dr. W referred him. The claimant stated that he completed one-half of the program and then the self-insured denied payment for the rest of the course. In a "To Whom it May Concern" letter dated August 19, 1997, Dr. W noted that the claimant had completed six weeks of a 12-week therapy program he had ordered. He noted that the claimant was improving in the program but his improvement was not complete because he did not finish the program. Dr. W ended the letter by stating that he would not release the claimant to return to work "until he has completed this program and I am able to give him a full evaluation."

On January 8 and 9, 1997, the claimant attended a functional capacity evaluation (FCE). The FCE report concluded that the claimant could perform a job with limited lifting and carrying. It further noted that he would require frequent changes of position from sitting to standing to walking and that "[h]e would have great difficulty with any job which required running, constant walking, stooping, squatting or kneeling."

The claimant testified that during the filing period, he talked to people he knew about getting a job. He stated that he contacted a cab company about driving and was told that they did not need anyone at that time. However, he stated that the company contacted him in December and he began driving the cab. He stated that he is an independent

contractor and that the amount of money he brings home is dependent upon the number of fares he has on a given day. He also testified that he applied at a convenience store and a discount store in the filing period.

The hearing officer determined that the claimant did not establish that he had made a good faith effort to seek employment commensurate with his ability to work in the filing period for the 16th quarter as is required by Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.103 (Rule 130.103). The claimant cites the decision in Texas Workers' Compensation Commission Appeal No. 971349, decided August 25, 1997, and argues that because the search he made with cab company in the filing period ultimately resulted in his obtaining employment, he has satisfied the good faith requirement in this instance. In Appeal No. 971349, the Appeals Panel reversed the hearing officer's determination that a claimant was not entitled to SIBS and rendered a new decision that he was eligible to receive those benefits. In Appeal No. 971349, the claimant applied for employment during the filing period and was hired after the filing period had ended. In rendering a decision that the claimant had made a good faith job search, that case states:

> What strikes us as especially erroneous about the hearing officer's determination that there was not a good faith search is that claimant actually undertook employment from an offer directly resulting from his search efforts during this quarter. Indeed, we believe that a search which yields an offer and then acceptance of employment is prima facie evidence of good faith, absent some showing that there was collusion between a claimant and an "employer" for purposes of assisting payment of SIBS.

We do not read Appeal No. 971349 to stand for the proposition that a claimant satisfies the good faith requirement as a matter of law if any job search effort he made in the filing period later results in his obtaining employment. The hearing officer apparently determined that under the facts of this case, the claimant's search, which he found entailed only three applications, did not rise to the level of a good faith search, even though he started working for one of the employers he contacted after the end of the filing period. Under Appeal No. 971349, the ultimate success of a job contact made during the filing period is evidence which weighs heavily in favor of a determination that the claimant has satisfied the good faith job search requirement; however, that factor is not in and of itself determinative of the question. The issue of whether the claimant in this case made a good faith effort to look for work commensurate with his abilities was a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The hearing officer is the sole judge of the weight and credibility of the evidence under Section 410.165(a). He determined that, in spite of the ultimate success of one of his job contacts, the claimant did not prove that he made a good faith effort to look for work commensurate with his ability in the filing period. Nothing in our review of the record indicates that that determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no

sound basis exists for disturbing it on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The fact that another fact finder could have drawn other inferences from the same evidence, which could have supported a different result, does not provide a basis for reversing the decision on appeal.

The question of whether the claimant demonstrated that his unemployment was a direct result of his impairment was also a question of fact for the hearing officer. After reviewing the record, we cannot agree that the hearing officer's direct result determination is so contrary to the great weight and preponderance of the evidence as to compel reversal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Christopher L. Rhodes
Appeals Judge