

APPEAL NO. 980316
FILED MARCH 26, 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 15, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were whether the appellant (claimant) was entitled to supplemental income benefits (SIBS) for the first, second and third compensable quarters. The hearing officer determined that the claimant was not entitled to SIBS for any of the quarters in issue and the claimant appeals, urging only that the great weight of evidence is to the contrary of the hearing officer's decision. The respondent (carrier), citing specific evidence in the record, urges that there is sufficient evidence to support the decision and that the claimant has not met his burden of proof.

DECISION

Affirmed.

Very briefly, the claimant sustained a compensable injury to his back and right shoulder on _____, while lifting a stove. He initially treated with a chiropractor, who released him from care as of May 17, 1995, and found maximum medical improvement (MMI) on that date with a zero percent impairment rating (IR). He was subsequently evaluated on August 15, 1995, Dr. H, who certified a zero percent IR. The claimant acknowledged that his treating doctor at the time, Dr. N, a neurologist, released him to light duty in September 1995. A later report from Dr. H dated July 28, 1997, certified MMI on February 7, 1996, with a 19% IR related to the compensable injury. In the meantime and in a report from the Cancer Center dated November 14, 1995, the claimant, who continued to have problems, was diagnosed with an unrelated arachnoid cyst, intradural, at C-4/5, underwent extensive surgery on November 15, 1995, and entered a lengthy recuperative period.

The claimant stated he did not know about SIBS until receiving a letter from the Commission in August 1997 concerning possible entitlement to SIBS and requesting information. The filing periods for the three quarters in issue ran from December 14, 1996, to September 10, 1997. The claimant could not remember any specifics about any job searches during most of the time covered by the first two filing periods in issue. Although he did not list any contacts, he stated he "did go out and do what I could as far as, you know, looking for work or, you know, working a little bit here and there." He described as "very slight" his search for work during the second quarter filing period and stated he did some work for some friends. Regarding the third quarter filing period, the claimant testified in answer to the question as to whether he looked for any type of employment that "yes, I did, on that particular one. You know, it was very little, but—you know, it was minute." He stated that he was not aware that it had to be noted.

The hearing officer, noting that the claimant's testimony was "inconsistent and non persuasive," found that the claimant had some ability to work during the filing periods, did not make a good faith effort to obtain work commensurate with his ability, and failed to meet his burden of proof that his unemployment was a direct result of his impairment for the three filing periods in issue. We have reviewed the testimony and evidence of record and cannot conclude that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, our standard of review on evidentiary sufficiency issues. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge