

## APPEAL NO. 990015

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 December 2, 1998. 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 10th quarter. In his appeal, the claimant essentially argues that the hearing officer's determination that he did not make a good faith effort to look for work commensurate with his ability to work in the filing period for the 10th quarter is against the great weight and preponderance of the evidence. In its response, the respondent (self-insured) urges affirmance. The self-insured did not appeal the hearing officer's determination that the claimant's unemployment in the filing period was a direct result of his impairment.

### DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, which resulted in an impairment rating of 17%; that he did not commute his impairment income benefits; and that the 10th quarter of SIBS ran from October 2 to December 31, 1998, with a corresponding filing period of July 3 to October 1, 1998. The claimant testified that he sustained bilateral hand/wrist injuries, carpal tunnel syndrome; that he has had bilateral carpal tunnel release surgery as a result of his injury; and that he also had to have surgery to repair a finger that became drawn after his left carpal tunnel surgery. He stated that he still has problems with numbness and tingling in his hands, that he has difficulty handling things because he drops them; that he has restrictions against lifting, standing, stooping, and repetitive use of his hands as a result of his compensable injury; and that he could not return to the job he was doing at the time of his injury, sorting and delivering mail for the self-insured school district, because he can no longer do heavy lifting and cannot perform repetitive tasks with his hands.

The claimant testified that he applied with 27 employers during the filing period for the 10th quarter. He stated that he found several of the employers he contacted through advertisements in the newspaper and that he also applied with employers who had signs posted that they were hiring. In addition, the claimant stated that he registered with the Texas Workforce Commission (TWC) and that he has followed up on all of the employment contacts sent to him by the TWC. He further stated that he applies in person with the potential employers and that he tries to give his applications directly to the manager of the business where he is applying. On cross-examination, the claimant acknowledged that he applied with several employers in the filing period for the 10th quarter with whom he had unsuccessfully applied in previous quarters. He explained that those employers (places) were large employers who had substantial turnover and that he believed it was essential that he continue to follow-up and reapply in order to demonstrate his desire to work. He insisted that he would take any job that was offered to him and that he wants to return to work. In response to questioning from the hearing officer, the claimant stated that he is 69

years old and that he receives full social security benefits and retirement benefits from the self-insured. However, he further testified that he would be looking for work even if he were not eligible for SIBS because the extra money "would certainly be a help." Finally, the claimant testified that he did not look for work for approximately two weeks in August because he was visiting a relative.

The hearing officer determined that the claimant did not make a good faith job search in the filing period for the 10th quarter. In making that finding the hearing officer noted that the claimant had "made a total of twenty-seven job contacts during the quarter including multiple contacts at several of the businesses" and that he "made no job contacts during the month of August when he was on vacation." The question of whether the claimant made a good faith effort to look for work commensurate with his abilities in the filing period was a question of fact for the hearing officer to resolve. It was the hearing officer's responsibility, as the sole judge of the evidence under Section 410.165(a), to consider the evidence and to determine whether the claimant engaged in a good faith job search in the filing period. In making his good faith determination, the hearing officer was free to consider the number of contacts made and the nature of those contacts. To that end, we note that although a claimant's good faith effort should generally span the filing period, the Appeals Panel has stated that a claimant's job search effort does not have to encompass a specific length of time. Texas Workers' Compensation Commission Appeal No. 961454, decided September 11, 1996; Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. There is no requirement that a claimant look for work every day of the filing period. Texas Workers' Compensation Commission Appeal No. 960818, decided June 3, 1996. Thus, we caution that we find nothing in the 1989 Act or the Texas Workers' Compensation Commission's rules that would preclude a finding of good faith simply because a claimant takes a two-week vacation in the filing period to visit family. We further note that while there may be circumstances where a claimant's return to the same employers where he has previously been unsuccessful in finding employment could cause a hearing officer to question if the contact was made in a genuine attempt to obtain employment, this does not appear to be such a case. In this instance, the claimant returned to employers who had frequent turnover and several jobs within his restrictions in successive filing periods. He did so to demonstrate his interest in working for the employer and to increase his chances of being hired. We believe that such actions are indicative of a genuine effort to find employment and are puzzled by the hearing officer's apparent belief that they somehow demonstrate the absence of good faith. The hearing officer considered the efforts the claimant made in the 10th quarter filing period to look for work and was not persuaded that those efforts were sufficient to establish a good faith effort to look for work within his abilities. Our review of the record does not demonstrate 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 reversing 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). Another fact finder could have drawn different inferences from the evidence, which could have supported a different result; however, that does not provide a basis for us to disturb the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Judy L. Stephens  
Appeals Judge