

APPEAL NO. 990019

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 9, 1998, a hearing was held. He determined that the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the 16th compensable quarter from September 16, 1998, through October 20, 1998. Claimant asserts that the carrier (city) did not explain time limits for providing documents and asks that SIBS for the entire period be paid. Respondent (city) asserts that no SIBS should be paid since claimant did not attempt in good faith to find work, citing claimant's time spent regarding hunting guide work and the report of its agent indicating that some employers claimant provided information about had no knowledge of claimant. City then replied to claimant's appeal.

DECISION

We affirm.

It was not disputed that claimant did not provide his Statement of Employment Status (TWCC-52) to the city until September 16, 1998. The parties stipulated that claimant was compensably injured on _____, that his impairment rating is 23%, that no benefits were commuted, that the filing period for the 16th quarter began on April 22, 1998, and that the 16th quarter itself began on July 22 and ended on October 20, 1998.

Claimant acknowledged in his testimony that he was found not to be entitled to SIBS for the 15th quarter and that decision was affirmed by the Appeals Panel. He stated that the city did not send him a form to fill out for the 16th quarter, and he obtained one from the Texas Workers' Compensation Commission (Commission). Claimant argued at the hearing that Texas Workers' Compensation Commission Appeal No. 972017, decided November 24, 1997, required the city to provide a form to him and since it did not, his SIBS should not be reduced for late filing. Appeal No. 972017 addressed the obligation of a carrier (city) to provide a form for the next SIBS period and said that the obligation was present when SIBS were paid in lump sums when SIBS were due for the preceding quarter. It did not say that a form must be provided for the next quarter when SIBS were not due for the last quarter. The hearing officer's determination that city was not liable for SIBS from July 22 to September 16, 1998, is sufficiently supported by the evidence, the 1989 Act, and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104(b) (Rule 130.104(b)).

Claimant provided a TWCC-52 form with 58 to 62 contacts listed. The hearing officer accurately commented that over half were related to claimant's attempts to secure permission from landowners to use their land (a form of lease) for hunting trips and to interest hunters in using him as a guide in hunting trips to the "leased" land. While the city stresses the time and effort claimant spent trying to work as a guide for hunters in saying a good faith effort was not shown, both the Statement of Evidence and a finding of fact in the hearing officer's opinion indicate that he found a good faith attempt to find work primarily from the "contacts of a more conventional nature." The hearing officer found that "at least"

20 employers were contacted but evidence at the hearing indicated that approximately 30 employers were contacted in the filing period.

Ms. J testified for the city that she sent lists of possible job contacts to claimant; she later called some of these and was told that claimant had not applied. Claimant testified that Ms. J sent him numbers for him to refer to at the Texas Workforce Commission (TWC). This, he said, he did. Claimant provided a diary of his daily activities to Ms. J and to the hearing officer. It shows repeated contacts with the TWC. In addition, there was no evidence that claimant did not cooperate with Ms. J in trying to find work.¹ Claimant explained that he never heard of some of the names Ms. J referred to in testifying that claimant had not applied. He explained that he took whatever number Ms. J sent him (there was no name of an employer, just a number and a type of job, such as salesman) to TWC and brought them up on their computer; he said some were not in the computer and some he does not remember at all. He referred to several notices he received from Ms. J with numbers on them, but indicated that he did not have the one in question with the numbers (employers) alluded to in this hearing in his file.

Claimant's submission included copies of applications made and a copy of one rejection letter.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. Whether or not a claimant attempted in good faith to find work is generally a factual determination for the hearing officer to make. See Texas Workers' Compensation Commission Appeal No. 960818, decided June 3, 1996. The hearing officer may assign weight as he believes appropriate to evidence that a limited number of employers do not have information about applications that claimant indicated were made. In this case, it is clear that claimant cannot return to his past job as a firefighter. His doctor advises more surgery to transpose nerves to address his left upper extremity and neck problem; the claimant wants additional surgery. The hearing officer specifically states in his Statement of Evidence that claimant's efforts were made with an "honesty of purpose and sincere intent to find employment." This is as good a definition of "attempt in good faith" as there probably is. Claimant's testimony and the extensive diary he kept provide evidence to support this conclusion. The determination that claimant attempted to obtain employment in good faith is not against the great weight and preponderance of the evidence. With that determination affirmed, the determination that claimant is entitled to SIBS for that part of the 16th quarter remaining after claimant filed his application for SIBS is sufficiently supported by the evidence and the other findings of fact.

¹Such cooperation is not required (Texas Workers' Compensation Commission Appeal No. 941041, decided September 20, 1994) but is a factor that may be considered by the hearing officer regarding good faith.

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:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge