

APPEAL NO. 990041

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 December 4, 1998. On the single issue at the CCH, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 18th compensable quarter. The claimant appeals findings of fact and conclusions of law concerning the claimant's attempt in good faith to seek employment which he urges are so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust, requiring reversal. The respondent (carrier) argues that there is sufficient evidence to support the decision of the hearing officer and asks that the case be affirmed.

DECISION

Affirmed.

The claimant sustained a back and left shoulder injury on _____, subsequently had back surgery in 1992, and ultimately received a 19% impairment rating. The filing period for the 18th quarter of SIBS ran from June 11 to September 9, 1998. He has not returned to work. Although the claimant's doctor indicates in a May 8, 1998, statement and earlier off-work notes that the claimant is unable to work, a functional capacity evaluation in July 1998 shows ability to perform at the light-work level. The claimant testified that during the filing period he looked for employment for two to three hours per day during 15 days of the filing period at some 15 locations, although he was vague and could not remember many details as to time and place (some documentation was submitted concerning some seven attempts to seek employment).

The hearing officer determined that the claimant had some ability to work (not on appeal) and that he did not make a good faith effort to seek employment commensurate with his abilities. Whether or not a good faith effort has been made is generally a question of fact for the determination of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. In considering whether a good faith effort is shown, the pattern of the job search is pertinent, as is the manner of the job search with respect to timing, forethought, and diligence. Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995; Texas Workers' Compensation Commission Appeal No. 971209, decided August 11, 1997. A job search should also be ongoing throughout the entire filing period and not just over the course of several days during the 90-day filing period. Texas Workers' Compensation Commission Appeal No. 982512, decided December 2, 1998, and cases cited therein. Here, the hearing officer stated she considered the timing, method, and manner of the claimant's job search efforts and found them wanting in demonstrating diligence in pursuing an objective of employment commensurate with his ability to work. From our review of the record, we cannot conclude that her findings, conclusions, and decision are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge