

APPEAL NO. 990077

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 November 24, 1998. With respect to the issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the eighth quarter. In his appeal the claimant asserts that the hearing officer's determinations that he did not make a good faith job search in the filing period and that he is not entitled to SIBS are against the great weight and preponderance of the evidence. In its response, the respondent (carrier) urges affirmance. The carrier 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 back injury on \_\_\_\_\_, which resulted in his being assigned an impairment rating of 16%; that he did not commute his impairment income benefits; and that the eighth quarter of SIBS ran from August 26 to November 24, 1998, with a corresponding filing period of May 27 to August 25, 1998. The claimant testified that he was released to light-duty work by Dr. T, his then treating doctor, in 1996. He stated that he applied with 27 potential employers in the filing period but he was not contacted about employment by any of those employers. The claimant stated that he is 39 years old; that he began working as a migrant worker in 1972, when he was 13 years old; and that he worked from 1972 until the date of his compensable injury and has not worked since. On cross-examination, the claimant testified that he would accept either full-time or part-time work and that he would work on a day or an evening shift, noting that he would take whatever work was available.

Ms. M a vocational counselor hired by the carrier testified at the hearing. Ms. M stated that the claimant's attorney would not permit her to contact the claimant and, as such, she stated that she did not provide any job referrals to the claimant in the filing period. At the request of the carrier, Ms. M made an attempt to verify the claimant's applications. In her report, Ms. M stated that 16 of the 27 employers listed by the claimant on his Statement of Employment Status (TWCC-52) indicated that they did not have an application on file from the claimant and that seven of the employers advised her that they did not employ the person the claimant identified as his contact person.

On appeal, the claimant argues that the hearing officer's findings that "[d]uring the filing period, Claimant did not possess the subjective intent to obtain employment commensurate with his abilities" and that "[d]uring the filing period, Claimant did not make a good faith effort to seek employment commensurate with his abilities" and her legal conclusion that he is not entitled to SIBS for the eighth quarter are against the great weight and preponderance of the evidence. 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 concerning the claimant's job search efforts in the filing period and to determine if the claimant had sustained his burden of proving that he made a good faith job search. In making her good faith determination, the hearing officer was free to consider the number of employment contacts made and the nature of those contacts. In this case, the hearing officer noted that some of the claimant's employment applications were incomplete, that he did not list references on the applications where they were requested, and that he sought employment on 23 of the 90 days of the filing period. The claimant argues that the hearing officer is imposing new requirements on him which are not established in either the statute or the rules. After carefully reviewing the hearing officer's decision, we cannot agree that she imposed new requirements on the claimant. The hearing officer was acting within her province as the fact finder in determining that based upon her review of the claimant's efforts to look for work in the filing period, she was not persuaded that they were sufficient to establish a good faith job search. Our review of the record does not demonstrate that the challenged determinations are 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 may well 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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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge