

APPEAL NO. 990083

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 16, 1998, a hearing was held. He determined that the appellant (claimant) did not attempt in good faith to obtain employment commensurate with his ability and awarded no supplemental income benefits (SIBS) for the 12th compensable quarter. Claimant asserts that he did attempt to find work in good faith, implying that his inability to give detailed answers to questions about job contacts should not determine whether he attempted in good faith to find work. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when, he testified, he slipped and fell at work, injuring his back. The parties stipulated that the injury on _____, was compensable, that the impairment rating (IR) is 24%, that claimant has not commuted any benefits, that the 12th quarter began on September 12, 1998, and that claimant earned no wages during the filing period for that quarter. The hearing officer also found that the filing period began on June 14, 1998.

Claimant did not assert that he had no ability to work, but that he had attempted to find work by making 36 job contacts during the quarter. While the appeal makes reference to "totally disabled," the hearing was not conducted under that theory. Only one medical report in evidence mentioned claimant being "unable" to work and that was a 1996 report by Dr. S which indicated that claimant "is unable to go back to his previous job description or any other physically demanding type of work." There is nothing in the 1989 Act, the applicable rules, or Appeals Panel decisions which states that a fact finder cannot give weight to the ability of a claimant to answer questions about representations he has made through his application for SIBS. In order to qualify for SIBS a claimant has to show that he attempted in good faith to obtain employment commensurate with his ability. See Sections 408.142 and 408.143.

The hearing officer in his Statement of Evidence indicated that claimant was "unable to answer" specific questions regarding some places he contacted for work. The hearing officer did not state that claimant failed to give "specific detailed answers" as the appeal recites. The hearing officer then made a finding of fact that the claimant's testimony was not persuasive.

Carrier's evidence concerning its communication with employers named by claimant also questioned claimant's intent to find work.

The number of contacts made does not itself control whether good faith has been shown or has not been shown. See Texas Workers' Compensation Commission Appeal

No. 950364, decided April 26, 1995. Claimant cited Texas Workers' Compensation Commission Appeal No. 961671, decided October 1, 1996, which basically said that the hearing officer decides credibility in SIBS cases. Argument in that case that jobs sought were not within restrictions imposed was not found to overcome the decision of the hearing officer. Also cited was Texas Workers' Compensation Commission Appeal No. 961223, decided August 7, 1996, an Unpublished case addressing injury, extent of injury, and disability. The hearing officer's findings against that claimant were affirmed. Finally, claimant cited Texas Workers' Compensation Commission Appeal No. 961023, decided July 12, 1996, which also was an affirmance, but in that case it was of a designated doctor's determination of IR. We find nothing in these cases that indicates this decision should be reversed.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. Good faith is a factual question for the hearing officer to determine. He did not find claimant's evidence of good faith persuasive. The Appeals Panel will not substitute its judgment for that of the fact finder regarding a factual determination. There is no basis to overturn this decision.

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:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge