

APPEAL NO. 990087

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 16, 1998, a contested case hearing was held. With regard to the issue before him, the hearing officer determined that appellant (claimant) had not made a good faith effort to seek employment, that her unemployment was not a direct result of her impairment and that claimant was not entitled to supplemental income benefits (SIBS) for the fourth and fifth compensable quarters.

Claimant appealed, contending that the great weight of the evidence is contrary to the hearing officer's decision. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Pursuant to Section 408.142, an employee is entitled to SIBS if, on the expiration of the impairment income benefits (IIBS) period, the employee: has an impairment rating (IR) of 15% or more; has not returned to work or has returned to work earning less than 80% of the employee's average weekly wage as a direct result of the employee's impairment; has not elected to commute a portion of the IIBS; and has attempted in good faith to obtain employment commensurate with the employee's ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)), entitlement to SIBS is determined prospectively for each potentially compensable quarter based on criteria met by the injured employee during the prior filing period. Under Rule 130.101, "filing period" is defined as "[a] period of at least 90 days during which the employee's actual and offered wages, if any, are reviewed to determine entitlement to, and amount of, [SIBS]."

The parties stipulated that claimant sustained a compensable (bilateral carpal tunnel syndrome (CTS), cervical and shoulder) injury on \_\_\_\_\_, that claimant has a 16% IR, and that IIBS have not been commuted. The hearing officer found that the filing period for the fourth compensable quarter began on March 11 and went through June 10, 1998, with the filing period for the fifth compensable quarter being from June 11 through September 9, 1998. Claimant testified that she had a right CTS release in 1995 and a left CTS release in 1996. Claimant testified that she has a great deal of trouble and pain with her hands and can only drive for short distances.

Claimant's treating doctor is Dr. H, who in notes dated May 26, 1998, and September 22, 1998, stated that claimant cannot return to her previous work (with a large garment manufacturer). Other reports dated May 28 and September 21, 1998, state that claimant continues to have pain in her upper extremities, difficulty grasping objects and has

pain driving. A functional capacity evaluation performed on April 2, 1998, stated "testing was 100% invalid" and that claimant "views herself as completely disabled."

An Intracorp claims specialist (specialist) testified that claimant had been referred to the Texas Rehabilitation Commission (TRC) by the Texas Workers' Compensation Commission and he had made many efforts to make an appointment for her with the TRC but that claimant had canceled the appointments. The specialist testified that claimant apparently had finally gone to TRC (when is not clear) but had refused to sign any of the forms and consequently TRC had closed her file. Claimant said that she was unable to sign the forms because her hands hurt. The specialist also testified that claimant had been sent several lists of job contacts including a temporary agency that was actually seeking to hire 20 to 30 individuals but that claimant failed to follow up on that job contact.

Attached to claimant's Statement of Employment Status (TWCC-52) for the fourth compensable quarter is a list of 10 job contacts claimant said she made on three separate days. Claimant acknowledged these were "cold calls" where claimant would ask if they had any jobs available and that if the prospective employer asked about her hands, she would tell the contact about her injury. Attached to claimant's TWCC-52 for the fifth compensable quarter is a list of 31 job contacts. Claimant again acknowledged these were all cold calls. Carrier's specialist was able to verify only two of the listed contacts that claimant had in fact contacted. These job contacts were apparently made over 17 or 18 days. Claimant said that she had not made any contact with the Texas Workforce Commission. Claimant testified that she has an eighth grade education but has made no effort to obtain a GED.

The Appeals Panel has generally defined good faith as a subjective notion characterized by honesty of purpose and being faithful to one's obligations. Texas Workers' Compensation Commission Appeal No. 941293, decided November 8, 1994 (Unpublished). We have also cautioned that good faith is not established simply by some minimum number of job contacts, but the hearing officer may consider the manner in which the job search is undertaken "with respect to timing, forethought and diligence." Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996. Whether good faith exists is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. In this case, the hearing officer had the opportunity to observe the witnesses and had questioned the claimant. In his Statement of the Evidence, the hearing officer commented that claimant had indicated that "all her contacts were cold calls."

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge