

APPEAL NO. 990101

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 17, 1998. The issues at the CCH were whether the appellant/cross-respondent (claimant) was entitled to supplemental income benefits (SIBS) for the eighth and for the ninth compensable quarters. The hearing officer determined that the claimant was not entitled to SIBS for the eighth quarter and that he was entitled to SIBS for the ninth quarter.

The claimant appeals the denial of the eighth quarter as being so against the great weight and preponderance of the evidence as to be manifestly unjust and responds to the respondent/ cross-appellant's (carrier) appeal of the award of the ninth quarter of SIBS, urging that there is sufficient evidence to support that determination. The carrier appeals the award of SIBS for the ninth quarter, arguing that the evidence does not support either a finding of a good faith job search or that the unemployment was a direct result of the impairment. Carrier responds to the claimant's appeal, urging that there is sufficient evidence to support the determination of the hearing officer on the eighth quarter.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and in some detail the evidence in this case and it is adopted for purposes of this review. Briefly, the claimant was in a motor vehicle accident on _____, subsequently underwent spinal surgery and ulnar nerve transfer surgery, reached maximum medical improvement and was assessed an impairment rating in excess of 15%. It was brought out in the evidence that the claimant was denied benefits for the seventh quarter since he did not look for any employment, although he was determined to have some ability (sedentary) to work. The determination was upheld on appeal and is now in litigation under the judicial review provisions. In that case, as well as the case under review, there was a difference in medical opinion as to the ability to work at all, with the claimant's treating doctor opining that the claimant had no ability to work and a carrier doctor indicating an ability to do only very light sedentary work. See Texas Workers' Compensation Commission Appeal No. 931147, decided February 3, 1994; Texas Workers' Compensation Commission Appeal No. 950173, decided March 17, 1995. The hearing officer resolved this matter by finding some limited ability to work. In any event, it is clear that the claimant has only a very restricted ability to work and that he cannot return to the type of employment (truck driver) he engaged in prior to the injury.

During the filing period (April 16 through July 15, 1998) for the eighth quarter, the claimant testified and offered some documentation that he looked for employment at some eight locations and contacted his union business agent for assistance. The hearing officer found that based on the totality of the evidence for the filing period, the claimant failed to demonstrate he made a good faith effort to seek work commensurate with his ability to work. Factors that are appropriately considered in judging whether a good faith effort is shown include the pattern of a job search, the time that searches were made, the number

and type, and the forethought in planning and attempting to find employment. Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. We have reviewed the evidence of record regarding the hearing officer's finding that a good faith effort was not shown during the filing period for the eighth quarter and cannot conclude that this determination was 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). It is also clearly supported by the evidence that the unemployment was a direct result of the impairment.

Regarding the filing period for the ninth quarter, there was considerably more activity, structure, and documentation on the part of the claimant in demonstrating he attempted in good faith to seek employment commensurate with his ability to work. The hearing officer found from the evidence that the claimant made attempts to find employment two to three times per week during the majority of the filing period, although many were "cold calls" with only some having help wanted signs. He testified that he went to the numerous places he listed on his Statement of Employment Status (TWCC-52) and honestly tried to find employment but was not successful. The hearing officer states that she found the claimant credible in his testimony. She found that a good faith effort to seek employment during the filing period for the ninth quarter had been shown and that the claimant was thus entitled to SIBS for the ninth quarter. As we review the evidence, we cannot conclude that her determinations are against the great weight and preponderance of the evidence. Cain, supra; Pool, supra. We also conclude that her determination that the unemployment was a direct result of the impairment is supported by sufficient evidence.

The decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge