

APPEAL NO. 990149

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 January 6, 1999. On the single issue before her, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 14th compensable quarter. The claimant appeals, urging that she was enrolled in a Texas Rehabilitation Commission (TRC) training program and that she also looked for employment, which more than satisfied the good faith job search requirements of the 1989 Act. The respondent (carrier) urges that the evidence is sufficient to support the decision of the hearing officer and asks that it be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth the evidence in this case fairly and adequately and it will only be briefly summarized here. On _____, the claimant testified that she sustained injuries to her cervical and lumbar spine when she tried to stop some fabric from falling. She has continued to receive conservative treatment. She reached maximum medical improvement on November 7, 1994, and was assessed a 16% impairment rating. She is seeking SIBS for the 14th quarter, the filing period for which ran from July 15 to October 14, 1998. The claimant testified that she has been in a college program since 1994 under the auspices of the TRC and had acquired some 79 hours. She intends to go to a state university to complete her degree. She states that she has done some tutoring work. She states she continues to have pain and problems with her back. Regarding the filing period in issue, the claimant indicated that she completed some course work in May 1998 and did not take any summer courses but started back to school in the fall. Form notes from her doctor show that he took her off work on June 30, 1998, and returned her to work on September 9, 1998. She states that she went to a doctor in Mexico (apparently sometime in August, according a medical note) and that he thought she needed an operation. Her treating doctor, Dr. H, recommended some tests and did not believe surgery was indicated. An MRI conducted on August 12, 1998, indicated C4-5 and C6-7 small central disc herniations without significant neural foramina or spinal stenosis, mild degenerative disc disease from C2-3 to C6-7, no evidence of significant spinal canal stenosis or bony neural foramina stenosis and L5-S1 mild degenerative disc disease with a small left neural foramina disc herniation.

An earlier (December 15, 1997) report from Dr. C indicated that he had reviewed the medical records and diagnostic tests and a functional capacity evaluation and that he felt the claimant could work at the moderate-duty level.

During the filing period, the claimant asserts that her doctor took her off work from June 30 to September 9, 1998, but that she did do some tutoring before, during, and after that time period. She also started taking courses again sometime in August. She claims

that during the filing period she applied (applications could not be verified at some of the locations when checked by the carrier's representative) at some 11 prospective employers.

Records she submitted indicate most were at one particular mall and that the dates of contact were: one on September 25th, two on September 28th, four on September 29th, two on September 30th and two on October 5th.

The hearing officer found that during the filing period the claimant had the ability to perform light-duty work and that during the filing period she did not make a good faith effort to obtain employment commensurate with her ability to work. We have reviewed the evidence of record and cannot conclude that her findings and determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The hearing officer did not find persuasive the form note from Dr. H indicating the claimant was placed in an off-work status from June 30th without any further explanation or elaboration. This the hearing officer could well reject. Texas Workers' Compensation Commission Appeal No. 962447, decided January 14, 1997. This is particularly so where the claimant indicated that she did some work (tutoring) during the time frame. With regard to the job search, the overall pattern of the search and the flurry of activity at the end of the filing period could be reasonably inferred not to demonstrate a good faith effort to seek or obtain employment commensurate with the ability to work. Texas Workers' Compensation Commission Appeal No. 971209, decided August 11, 1997; Texas Workers' Compensation Commission Appeal No. 982987, decided February 4, 1999; Texas Workers' Compensation Commission Appeal No. 982210, decided November 4, 1998. Although during part of the filing period in issue the claimant attended courses (less than full-time student status) under the auspices of and in cooperation with TRC programs, a commendable and required activity, under the circumstances presented here, this did not, in and of itself, fulfill the statutory requirement that a claimant attempt in good faith to seek employment commensurate with her ability to work during the filing period in issue. See Texas Workers' Compensation Commission Appeal No. 931019, decided December 17, 1993.

For the reasons stated, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge