

APPEAL NO. 990158

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 11, 1999. With respect to the issue before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the 14th compensable quarter. In its appeal, the appellant (carrier) argues that the determinations that the claimant made a good faith job search in the filing period and that she is entitled to SIBS for the 14th compensable quarter are against the great weight and preponderance of the evidence. In her response the claimant urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____, for which she was assigned at least a 15% impairment rating, and that she did not elect to commute her impairment income benefits. The claimant testified that she was injured when she lifted a box at work, it came open, and the weight of the box caused her to fall. She stated that she injured her head, neck, right arm, back, and right leg. The 14th quarter of SIBS ran from October 15, 1998, to January 13, 1999, and the filing period was identified as the period from July 21 to October 14, 1998.

The attachment to the claimant's Statement of Employment Status (TWCC-52) indicates that she contacted 22 potential employers in the filing period. She testified that she contacted seven other employers in the period from October 5th to October 21st. She stated that she contacted most of the employers in person and left applications with the employers who were hiring; however, she noted that there were a few employers she contacted by telephone. She stated that she applied for positions as a cashier, salesperson, desk clerk, and any other position that was available and within her restrictions. She further testified that she was not contacted by any of the employers with whom she applied in the filing period and that she was not offered any jobs. On cross-examination, the claimant testified that when she contacts a potential employer, she asks if they are hiring, she completes an application, and she asks to speak to the manager or hiring authority. She acknowledged that she is not always able to speak to the person who makes the hiring decisions. She further testified on cross-examination, that she attempted to contact Ms. H, her case manager at the Texas Rehabilitation Commission (TRC), on several occasions in the filing period and that Ms. H would not return her calls. The claimant noted that when she previously contacted Ms. H, she was not offered any retraining opportunities. The claimant also acknowledged that she did not contact the Texas Workforce Commission (TWC) in the filing period. She explained that in prior quarters she had used the computer job listings at the TWC and had found that the positions were already filled when she contacted the employers.

The carrier introduced a report from Ms. M, its vocational rehabilitation specialist, relating to her efforts to verify the claimant's job search efforts. Ms. M opined that the claimant had not conducted a good faith job search because she reapplied with employers where she had previously been unsuccessful, she emphasized her disabilities rather than her abilities, she did not follow up on the referrals sent to her by Ms. M, and she did not seek the assistance of the TRC or the TWC. The carrier also introduced a letter from Ms. M to the claimant dated August 7, 1998, offering her services to the claimant. The claimant testified that she did not receive that letter, although the address on the letter was identified as her correct address. The claimant testified that she is willing to cooperate with Ms. M but that she has not been contacted by Ms. M since she advised Ms. M of her willingness to do so.

The hearing officer determined that the claimant made a good faith effort to look for work in the relevant filing period. That question was one 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 and to determine whether the claimant's job search efforts rose to the level of a good faith search. In arguing that the claimant did not satisfy the good faith requirement, the carrier emphasizes that the claimant continues to reapply with employers where she has previously been unsuccessful, that she focuses on her disabilities rather than her abilities, and that she is not utilizing Ms. M's services or the services of the TRC and TWC. The hearing officer heard the carrier's arguments to that effect at the hearing and was not persuaded by them. We agree that the factors mentioned by the carrier are factors which the hearing officer can consider in evaluating a good faith; however, the importance of those factors was a matter left to the discretion of the hearing officer, as the fact finder. In this case, the hearing officer was persuaded that the claimant's efforts of contacting some 29 potential employers in the filing period constituted a good faith effort to look for employment within her abilities. Our review of the record does not demonstrate that that determination is 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 the determination 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 could have drawn different inferences from the evidence, which would have supported a different result, but that does not permit reversal 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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge