

APPEAL NO. 990166

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 4, 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, citing evidence that he believes supports a good faith effort to seek employment commensurate with his ability to work and contending that the respondent (self-insured) did not prove its case. The self-insured responds that the claimant misplaces the burden of proof and, further, that the evidence is sufficient to uphold the findings and conclusions of the hearing officer.

DECISION

Affirmed.

The claimant, a schoolteacher for some 35 years, sustained a back injury from an assault by a student on _____, has undergone two back surgeries, and has been released to light-duty work. He is seeking SIBS for the 14th compensable quarter, the filing period for which ran from July 7 to October 5, 1998. The hearing officer's Decision and Order sets forth the evidence regarding the claimant's job search efforts during the filing period and we only summarize it here. The claimant testified that he has a bachelor's and master's degree, is certified and licensed to teach at all grade levels, and has certifications for other administrative levels. He stated that during the filing period he sent out some 34 resumes but that he was not offered any job. He got most of his leads to send resumes from a daily and one other newspaper, and got some job leads from the Texas Workforce Commission. He stated that the employer did not have a light-duty position for him. He acknowledged that he did not seek any part-time teaching positions. He stated that when he would get an application from sending a resume he would fill it out and return it and did so to several school districts except one. He also acknowledged that he set out his disabilities on the resume and that he sent medical report information to several of the prospective employers.

The self-insured retained a vocational specialist, GS, who had been a vocational counselor with the employer for some 25 years and had been a vocational counselor for (counselor) for some two years, to work with the claimant on finding a job. GS stated that his whole career as a vocational counselor was directed toward helping find jobs for injured employees and that he had worked with several school districts. According to GS, he reviewed the claimant's resume and basically advised him that it was too negative and concentrated on his limitations rather than his qualifications and experience. GS stated that after his second interview with the claimant, the claimant refused help and told him he did not want his services. GS stated that he personally contacted 15 of the employers listed by the claimant and attempted to contact all the others by telephone. GS stated that the result was that out of the 34, he could only find six who had received a resume from the claimant, 18 could not locate a resume belonging to the claimant, one interviewed the claimant on the

phone, and nine could not be contacted. GS explained that a resume, particularly when not stating a particular position being applied for, generally results in an application being sent to the person to fill out. According to GS, of the four school districts that sent the claimant applications, none had any application from the claimant and none of the other employers contacted had applications.

The hearing officer found that the claimant did not make a good faith effort to seek employment and that his unemployment was not a direct result of the impairment. Clearly, these were factual matters for the hearing officer's determination based on all the evidence and circumstances surrounding the claimant's efforts. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 980993, decided June 12, 1998 (Unpublished). As we have previously stated, the pattern of a job search, particularly with regard to the manner of the search, the timing, the forethought and diligence shown, are all factors that a hearing officer can appropriately take into consideration. Texas Workers' Compensation Commission Appeal No. 982987, decided February 4, 1999; Texas Workers' Compensation Commission Appeal No. 972637, decided February 4, 1998. As the hearing officer observes in her discussion, the claimant seemed to concentrate on his injury in his resume rather than what he could do and he failed to complete applications that were sent to him in response to his resumes. She felt this showed a disinterest in finding employment. This is particularly significant given the qualifications and experience the claimant possesses for the teaching and related professions.

This case reflects a hearing officer's weighing and resolution of conflicting evidence considered in the totality of the circumstances presented. The Appeals Panel does not second guess the factual findings of the hearing officer under such conditions even though it can be argued that inferences different from those found most reasonable by the hearing officer may find some support in the evidence. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 962318, decided December 31, 1996. Only were we to conclude, which we do not here from our review of the evidence, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb her decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge