

APPEAL NO. 990168

This appeal is brought 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. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury on _____; that his impairment rating is 19%; and that the filing period for the 15th quarter for supplemental income benefits (SIBS) was from November 27, 1997, through February 25, 1998. The hearing officer determined that the claimant made job searches on December 27, 1997, and January 2 and 3, 1998; that the claimant made three job searches during the filing period for the 15th quarter; and that during the filing period he did not in good faith seek employment commensurate with his ability to work. She also determined that the claimant did not have a serious injury with lasting effects, that during the filing period his unemployment was not a direct result of his impairment from the compensable injury, and that he is not entitled to SIBS for the 15th quarter. The claimant appealed, contended that the medical reports overstate his ability to work and that he looked for work according to his ability to work, and requested that the Appeals Panel reverse the decision of the hearing officer. The carrier responded, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We affirm.

The claimant testified that he had surgery on his back in 1992 and 1993, that the form he had been using to apply for SIBS had three places to list places where he applied for work, that for prior quarters he listed three places where he looked for work, that he had previously applied for SIBS for 13 quarters and was paid SIBS for each of those quarters, that during those filing periods he had not been released to return to work but listed three places where he looked for work because he was told he had to look for work to receive SIBS, that in January 1998 he first learned that he should list more places where he applied for work when he received a new form with more spaces to list places where he applied and an adjuster told him to list more places, and that he did what was necessary to get his checks. He said that the town he lives in has mostly grocery stores, video stores, and gas stations; that during most of the month of January 1998 he was in a church rehabilitation program that was not related to his injury; and that during the filing period he applied for jobs on December 27, 1997, and January 2 and 3, 1998. A functional capacity evaluation was performed on January 21, 1998, and a report provides lifting restrictions and states that he is at the lower end of medium work category and that many medium-level work activities may be difficult for him.

The request for review by the claimant disputes the determinations related to his not seeking employment commensurate with his ability to work. Determinations on entitlement to SIBS for a quarter are made on a case-by-case basis and a determination of entitlement to SIBS for one quarter is not binding or *res judicata* for later quarters. Texas Workers'

Compensation Commission Appeal No. 961424, decided September 5, 1996. Whether good faith was shown is usually a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. Consideration can be given to the manner in which a job search is made and timing, forethought, and diligence may be considered in determining whether a good faith job search was made. Texas Workers' Compensation Commission Appeal No. 961195, decided August 5, 1996. In Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, the Appeals Panel rejected the contention that a certain number of job applications showed good faith and stated the following about good faith:

In common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation.

And in Texas Workers' Compensation Commission Appeal No. 960252, decided March 20, 1996, the Appeals Panel stated that the trier of fact, in determining whether the claimant in good faith sought employment commensurate with the ability to work, sometimes assesses whether undeniable contacts made with prospective employers constitute a true search to re-enter employment or are done instead in a spirit of meeting, on paper, eligibility requirements for SIBS. Limited job contacts on only several days during a 90-day filing period generally are not sufficient to establish that a good faith job search was made. Texas Workers' Compensation Commission Appeal No. 982599, decided December 17, 1998.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Her determinations that during the filing period for the 15th quarter for SIBS the claimant did not in good faith seek employment commensurate with his ability to work and that he is not entitled to SIBS for the 15th quarter are not 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We have not specifically been requested to address the determination that the claimant's unemployment during the filing period was not a direct result of his impairment from the compensable injury and that determination alone is sufficient to support the conclusion that the claimant is not entitled to SIBS for the 15th quarter.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge