

APPEAL NO. 990231

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 5, 1999. He (hearing officer) determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 10th quarter. The claimant appeals this determination, expressing his disagreement with it. The respondent (self-insured) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____, in a slip-and-fall accident. He reached maximum medical improvement on May 22, 1995, and was assigned a 19% impairment rating.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBS after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)), the quarterly entitlement to SIBS is determined prospectively and depends on whether the employee meets the criteria during the prior quarter or "filing period." Under Rule 130.101, "filing period" is defined as "[a] period of at least 90 days during which the employee's actual and offered wages, if any, are reviewed to determine entitlement to [SIBS]." The 10th SIBS quarter was from September 23 to October 22, 1998, and the filing period was from June 24 to September 22, 1998.

The claimant submitted a Statement of Employment Status (TWCC-52) and testified to approximately 32 job contacts during the filing period. He said he found the job contacts through the newspaper, from friends, and from Mr. C, his case manager, and that he used the services of his treating doctor, Dr. B to transport him and about 10 other injured workers to various locations where they could inquire about employment. He also said that he spent three or four hours per day in his job search effort, went out looking for work about every other day, and did not document all his job search efforts. These additional efforts included contacting the Texas Workforce Commission every three days where, he said, he only spoke with a receptionist because there were no jobs identified for him. He said he submitted about 30 job applications, but did not otherwise reflect this or any follow-up action on the job contact forms in evidence. Mr. C testified and submitted a report of his efforts to verify the claimant's job search. He reported that 40 contacts were made, but was able to verify only three applications.

The hearing officer determined that the claimant did not establish the required good faith job search or that his unemployment in the filing period was a direct result of his

impairment. The Appeals Panel has generally defined good faith as a subjective notion characterized by honesty of purpose and being faithful to one's obligations. Texas Workers' Compensation Commission Appeal No. 93181, decided April 19, 1993. Whether the required good faith job search exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. We have also cautioned that good faith is not established simply by some minimum number of job contacts, but a hearing officer may consider the manner in which the job search is undertaken "with respect to timing, forethought and diligence." Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996. In this case, the hearing officer considered the evidence and concluded that the claimant did not establish a good faith job search. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and 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). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the claimant's evidence for that of the hearing officer and find no reason to disturb his resolution of this issue. Having affirmed the finding of no good faith job search, we also find the evidence sufficient to support the factual determination that the claimant's unemployment was not a direct result of his impairment. Texas Workers' Compensation Commission Appeal No. 94533, decided June 6, 1994.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge