

APPEAL NO. 990267

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 12, 1999. The appellant (claimant) and the respondent (carrier) stipulated that the claimant did not receive supplemental income benefits (SIBS) for the eighth, ninth, and 10th quarters and that the filing period for the 11th quarter began on May 15, 1998, and ended on August 14, 1998. The hearing officer found that during the filing period for the 11th quarter the claimant did not make a good faith effort to seek employment commensurate with his ability to work and that his unemployment was not a direct result of the impairment from his compensable injury and concluded that he is not entitled to SIBS for the 11th quarter and that he is no longer eligible to apply for SIBS because he failed to qualify for those benefits for four consecutive quarters. The claimant appealed, urged that the determinations are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to SIBS for the 11th quarter. The carrier responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a lengthy statement of the evidence and numerous citations to and summaries of the holding in Appeals Panel decisions. In his appeal, the claimant states that he agrees with the hearing officer's statement of the evidence, but does not totally agree with the conclusions she reached. The claimant testified that at a benefit review conference a benefit review officer told him that to qualify for SIBS he should look for 40 jobs during a filing period. During the filing period for the 11th quarter, a vocational counselor provided the claimant with the names of three prospective employers who had positions which were within the claimant's restrictions and for which he was qualified. The claimant did not seek employment with them. The claimant did not personally go to the location of any prospective employer. He did seek employment with 40 prospective employers by calling them on the telephone and by mailing or transmitting by facsimile written material to them. Some of the jobs he sought had physical requirements that exceeded his limitations and some job announcements indicated education, training, or experience that the claimant did not have.

The Appeals Panel decisions included in the hearing officer's Decision and Order fairly state the law concerning the requirement for a claimant seeking entitlement to SIBS to in good faith seek employment commensurate with his ability to work. 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.

In Texas Workers' Compensation Commission Appeal No. 950592, decided May 25, 1995, the Appeals Panel affirmed the determination of the hearing officer that the claimant did not make a good faith effort to seek employment where he sought employment for jobs that he did not think he was capable of performing with his restrictions rather than seeking employment with jobs that were within his restrictions. 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. The hearing officer relied on that Appeals Panel decision and stated that the claimant was engaging in activities to qualify for SIBS rather than to return to work.

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). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. The hearing officer wrote that she did not find the claimant to be a credible witness. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's findings that during the filing period for SIBS for the 11th quarter the claimant did not in good faith seek employment commensurate with his ability to work and that his unemployment was not a direct result of the impairment from his compensable injury and her conclusion that he is not entitled to SIBS for the 11th 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 affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge