APPEAL NO. 990329

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 29, 1999, a contested case hearing (CCH) was held. In response to the issue at the CCH, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the first compensable quarter. Appellant (carrier) appeals, contending that claimant did not meet her burden to prove the good faith and direct result criteria. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant was entitled to SIBS for the first compensable quarter. Carrier contends that claimant did not meet her burden to prove the good faith or direct result criteria.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the impairment income benefits (IIBS) period expires if the employee has: (1) an impairment rating (IR) of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBS; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. Although the claimant's good faith effort must, generally, span the filing period, the Appeals Panel has stated that a claimant's job search does not have to encompass a certain length of time. Texas Workers' Compensation Commission Appeal No. 961454, decided September 11, 1996; Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. There is no requirement that a claimant look for work every day of the filing period. Texas Workers' Compensation Commission Appeal No. 960818, decided June 3, 1996. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The parties stipulated that: (1) claimant's IR was 15%; (2) claimant did not elect to commute her IIBS; and (3) the filing period for the first compensable quarter was from August 11, 1998, to November 9, 1998.

Claimant testified that she sustained a compensable injury on _____, while working behind a cosmetics counter at (employer). She said she fell over some boxes and injured her neck, back, arms, and abdomen. Claimant testified that she continued to work, but that she saw a doctor on October 31, 1996, because her arm and neck were swelling and she had a headache. She testified that she continued working until December 8, 1996. She said she still experiences pain in her hips, neck, and between her shoulder blades, and has headaches, vision problems, swelling in her hands, and a burning sensation in her feet. Claimant said she tried to go back to work doing light-duty office work in January 1998, but she had to stop working because of pain. Claimant said she cannot do the housework that she used to do and said that her condition had worsened in the past year. She testified that she made three job contacts during the filing period in question, and that a third person made a fourth job contact on her behalf. Claimant said she spoke to a representative at the Texas Rehabilitation Commission who told her she could not obtain services until she obtained a release from her doctor. Claimant said she wants to work, but that she believes she needs treatment that has been denied by carrier before she can recover enough to go back to work.

On October 19, 1998, Dr. K noted that claimant had cervical spasm and a slow, slightly antalgic gait, and stated under "assessment," that claimant had a chronic cervical and lumbosacral sprain/strain with three level disc abnormalities of the cervical spine; lumbosacral facet arthropathy; and symptoms of cervical, thoracic, and lumbosacral spine pain with four extremity radiations worsening. Among the medical records in this case is a progress note from Dr. K written in October 1998 during the filing period in which he stated, "it is my opinion that [claimant] should remain completely off work until the recommendations [for physical therapy, repeat MRI testing, and baseline lab work] are carried out. . . . I feel [claimant's] diagnosis also includes chronic pain syndrome, which needs to be aggressively treated with a comprehensive pain program . . . ."

The hearing officer determined that: (1) claimant is still an employee of employer, but cannot return to work until she obtains a work release; (2) claimant wants to return to work; (3) claimant was unable to perform her job duties during the filing period in question because she was unable to stand for extended periods, unload boxes, and stoop; (4) claimant's injury has required that she limit her activities to no lifting in excess of five pounds, no pulling, no standing for extended periods, and no stooping or bending; (5) during the filing period in question, claimant attempted in good faith to obtain employment commensurate with her ability to work; (6) claimant failed to show that she had no ability to work; and (7) claimant met her burden to prove the direct result criterion.

In this case, our review of the record does not indicate that the hearing officer's good faith job search and SIBS determinations regarding the first compensable quarter are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.* Therefore, there is no basis for disturbing his decision on appeal. In deciding what claimant was able to do as far as a job search is concerned, the hearing officer could consider claimant's testimony and the medical evidence about claimant's pain, her inability to obtain treatment, her doctor's efforts to obtain treatment, and her work limitations. We find the evidence in this case minimally sufficient to support

the hearing officer's determinations. The fact that the evidence could have allowed different inferences under the state of the evidence does not provide a sufficient basis for reversing the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992. We further conclude that the evidence that claimant continues to have work restrictions supports the hearing officer's direct result determination. Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994.

We note that carrier cites two cases in support of its contentions on appeal. Texas Workers' Compensation Commission Appeal No. 941639, decided January 20, 1995; Texas Workers' Compensation Commission Appeal No. 970996, decided July 7, 1997. However, both cases involved affirmances of a hearing officer's decision. Good faith is a fact question for the hearing officer. In determining whether claimant made a good faith job search, the hearing officer may consider how impaired the claimant is and how that affects the ability to search for work. There is no specific number of job searches that automatically means that a claimant is in good faith; each claimant's actual physical ability must be considered along with other factors in making the good faith determination.

We affirm the hearing officer's decision and order.

_____
Judy L. Stephens
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge