APPEAL NO. 990330

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 21, 1999. The appellant (carrier) and the respondent (claimant) stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on July 29, 1996, with a 30% impairment rating; and that the filing period for the third quarter for supplemental income benefits (SIBS) began on July 18, 1998, and ended on October 16, 1998. The hearing officer made the following findings of fact and conclusion of law:

**FINDINGS OF FACT**

2. Claimant was underemployed during the filing period for the third quarter as a direct result of Claimant's impairment.

3. Claimant attempted in good faith, during the filing period for the third quarter, to obtain employment commensurate with claimant's ability to work.

**CONCLUSION OF LAW**

3. Claimant is entitled to [SIBS] for the third compensable quarter.

The carrier appealed those findings of fact and that conclusion of law; contended that the claimant's testimony and evidence concerning his activities officiating sports activities was not credible and that his looking for work on three days was not sufficient to constitute a good faith effort to seek employment; commented on the evidence; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBS for the third quarter. The claimant 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 Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be repeated in this decision. The claimant began working for the employer a few months before he was injured, worked as a pipe fitter, and performed heavy lifting. After the injury, the claimant was released to return to work full time with restrictions that included occasionally lifting not over 21 pounds. For about 20 years, the claimant officiated baseball and softball games. The claimant testified that after the injury, his treating doctor said that officiating sports activities would be within his limitations and he began officiating in other sports. He said that during the filing period he

officiated 29 junior and senior high school sporting events and was paid $1,319.00 for that work. The claimant stated that he spent considerable time studying rules, attending meetings, and performing activities to schedule other officials for sporting events; that he was not paid for the time spent doing those things; and that he did those things with the intent of becoming a better official, being assigned to events for which more money would be paid, and qualifying to officiate college sporting events. He agreed that many sporting event officials have other full-time jobs. He testified that he lived about 11 miles from a small town, that on three days during the filing period he sought employment with 22 employers in two small towns, that he went to those employers not knowing if they were hiring employees, that the week before Christmas 1998 he worked 20 hours hauling small limbs, that the first part of January 1999 he obtained a job reading about 600 electrical meters a month, that he sought that job during a prior filing period, and that he was paid $0.80 per meter for reading the meters.

Whether the claimant made a good faith effort to obtain employment commensurate with his ability to work and whether his unemployment was a direct result of his impairment are generally questions of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 941154, decided October 10, 1994. 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. As a general rule, seeking employment only during a few days during a filing period may not be sufficient to meet the good faith requirement. Texas Workers' Compensation Commission Appeal No. 980935, decided June 25, 1998. However, the hearing officer may consider other factors such as that the claimant was working at a job, was studying to improve the opportunities of obtaining other employment, and obtained employment as the result of efforts to obtain employment; the geographical area of the job search; and the rural nature of the area in which the claimant resided. In addition, a determination that underemployment was a direct result of the impairment from the compensable injury may be sufficiently supported by evidence that a claimant sustained a serious injury with lasting effects and could not reasonably perform the type of work he

was doing at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996.

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). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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 and the weight to assign to each witness's 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 found the claimant's testimony to be credible. The appealed findings of fact and conclusion of law 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 do not indorse all of the comments of the hearing officer in her statement of the evidence that would more appropriately have been included in a discussion in her Decision and Order; however, since we find the evidence sufficient to support the appealed findings of fact and conclusion of law, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Judy L. Stephens
Appeals Judge