APPEAL NO. 990350

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 February 10, 1999. She (hearing officer) determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 18th 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 _____. He reached maximum medical improvement on January 29, 1993, and was assigned a 23% 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 18th SIBS quarter was from August 12 to November 10, 1998, and the filing period for this quarter was the preceding 90 days.

At issue in this case is whether the claimant made the required good faith job search commensurate with his ability to work. The claimant submitted a Statement of Employment Status (TWCC-52) in which he listed 23 job contacts on 22 days of the 90-day filing period. He said he found the potential employers by word of mouth and by looking in the yellow pages of the telephone book. He said he believed the employers were hiring, but none were. He submitted one application and was told to return when the employer was hiring. He said he did not look on other days because he did not have the money to do so, or was feeling ill and lacked medications. The self-insured challenged the veracity of the claimant in asserting he made these job searches and noted that the dates of the job searches did not appear to have been entered contemporaneously with the job search and that several of the entries were in the same alphabetical order with the same address descriptions as contained in the yellow pages.

The hearing officer considered this evidence and commented that "[a]lthough the Claimant has significant physical and psychological limitations due to his compensable injury," he was still required to make a good faith job search commensurate with his ability to work. She also noted the limited number of job searches made and days involved in the

job search, and the fact that none of the employers contacted had job openings, in finding that the claimant did not make the required good faith job search.

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, including evidence of his ability to work, and concluded that the claimant did not establish a good faith job search commensurate with that ability to work. 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 that determination.

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

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Judy L. Stephens
Appeals Judge

CONCURRING OPINION:

I write separately because a finding of fact stated that "claimant's job search lacked . . . timing, forethought and diligence." While these qualities may be considered, they are not prerequisites to good faith, especially where the hearing officer states in her Statement of Evidence that claimant "suffers from" depression, anxiety and panic disorder. The findings of fact state other grounds on which I can affirm.

_____
Joe Sebesta
Appeals Judge