

APPEAL NO. 990357

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 25, 1999. The issue at the CCH was whether respondent (claimant) was entitled to supplemental income benefits (SIBS) for the second compensable quarter. The hearing officer determined that claimant is entitled to SIBS, from which determination appellant (carrier) appeals on sufficiency grounds. 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 is entitled to SIBS for the second compensable quarter. Carrier contends that claimant did not make a good faith effort to search for work. Carrier asserts that claimant sought work during only a few days of the filing period and that the pattern of her job search established that she did not act in good faith.

The applicable law and our standard of review are set forth in Sections 408.142(a) and 408.143; Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 951487, decided October 19, 1995; Section 410.165(a); and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant testified that she sustained a compensable injury on _____, when she fell to her knees after being tripped. Claimant said she injured her hip, knees, and back and that she now requires a cane to walk, whereas she did not before her compensable injury. She said she still has problems with her knees, back, and hip. Claimant said that, although she has not been released to return to work, she sought work during the filing period because she needed money. She said she thought she could do telephone work or something "easy." Claimant's Statement of Employment Status (TWCC-52) indicates that she contacted 37 potential employers during the 18-day period between September 23, 1998, and October 10, 1998.¹ It appears that her listed job searches were made on seven different days during that time period and that the searches were made with employers at two different mall or shopping locations. Claimant testified that she sought employment at locations near her home.

The medical evidence was unclear regarding claimant's physical condition due to the compensable injury during the filing period. In a June 24, 1997, note, Dr. S stated that

¹The hearing officer stated in the decision and order that the job search took place over the last six days of the filing period. However, the evidence shows that the job search took place during the last 18 days of the filing period and that claimant searched for work on either six or seven days during that time period.

claimant is “doing fine” and that she was involved in a motor vehicle accident (MVA) and was told that she strained her back. Dr. S said:

She was doing much better with the physical therapy until today when she was involved in [an MVA]. . . . She was thought to have an ankle sprain. Her neck demonstrates normal range of motion but with slight discomfort with lateral bending There is no palpable tenderness. . . . [Claimant] has pretty well reached her point of maximum improvement from a workman’s comp standpoint, however, she has a new injury. She can return to work from the standpoint of the workman’s comp injury.

In an October 8, 1997, note, Dr. S said that claimant has not been able to go back to work because of the “residuals of her back and the residuals from the car wreck. She is now much better from that.” Dr. S also said, “Again, she has reached her point of maximum medical improvement (MMI) and she is released from a workman’s comp standpoint, however, I do not believe that this lady will ever be able to return to work climbing stairs, taking care of children, etc. I don’t think she can do this safely.” In a January 29, 1998, note, Dr. S stated that “the sequella from [claimant’s MVA] is essentially cleared except for left ankle swelling occasionally.”

The parties stipulated that: (1) claimant sustained a compensable injury on _____; (2) claimant’s impairment rating (IR) was 15% or greater; and (3) claimant did not elect to commute her impairment income benefits. The filing period for the second compensable quarter was from approximately July 12, 1998, to October 11, 1998.

In this case, our review of the record does not indicate that the hearing officer’s good faith and SIBS determinations regarding the second 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. The hearing officer, as the sole judge of the evidence, considered the evidence about claimant’s ability to work and the timing and manner of her job search. The Appeals Panel has stated that there is no specific number of job contacts which establish that an employee’s job search efforts were made in good faith. Texas Workers’ Compensation Commission Appeal No. 960107, decided February 23, 1996. Whether good faith exists is a fact question for the hearing officer. Appeal No. 94150.

Carrier contends that claimant’s unemployment is not a direct result of her impairment, but is due solely to an intervening injury she sustained in an MVA in June 1997. There was evidence that by January 29, 1998, the sequelae from the MVA had essentially cleared except for occasional left ankle swelling. The hearing officer could find from the evidence that claimant’s unemployment was at least a direct result of her impairment from the compensable injury. The hearing officer’s direct result determination is sufficiently supported by evidence that claimant sustained a serious injury with lasting effects and that, during the filing period, she could not reasonably perform the type of work being done at the time of the injury. Texas Workers’ Compensation Commission Appeal

No. 93559, decided August 20, 1993; Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

DISSENTING OPINION:

I respectfully dissent as I conclude the determination of the hearing officer awarding SIBS in this case is so against the great weight and preponderance of the evidence as to be clearly wrong and contrary to a long line of precedent concerning the legal requirements for establishing a good faith effort to obtain employment commensurate with the ability to work. We have repeatedly held that the search covers the entire period and that a few job searches at the end of a filing period does not establish a good faith effort. It is clear to me that the very limited efforts shown here do not meet even the minimum legal and factual requirements for entitlement to SIBS. Texas Workers' Compensation Commission Appeal No. 982512, decided December 2, 1998; Texas Workers' Compensation Commission Appeal No. 980531, decided April 29, 1998; Texas Workers' Compensation Commission Appeal No. 980190, decided March 19, 1998; Texas Workers' Compensation Commission Appeal No. 970046, decided February 20, 1997; Texas Workers' Compensation Commission Appeal No. 972507, decided June 7, 1998; Texas Workers' Compensation Commission Appeal No. 960964, decided June 26, 1996. I would reverse the decision and render a new decision that claimant is not entitled to SIBS for the quarter in issue.

Stark O. Sanders, Jr.
Chief, Appeals Judge