

## APPEAL NO. 990385

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 January 21, 1999. With respect to the issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 22nd quarter. In her appeal, the claimant asserts error in the determination that her unemployment is not a direct result of her impairment from the compensable injury. The appeals file does not contain a response to the claimant's appeal from the respondent (self-insured). In addition, the self-insured did not appeal the hearing officer's determination that the claimant made a good faith effort to look for work during the filing period for the 22nd quarter. The claimant states in her appeal that she is appealing the good faith determination; however, that determination is not adverse to the claimant and, as such, she does not have a basis to appeal it.

### DECISION

Reversed and a new decision rendered that the claimant is entitled to 22nd quarter SIBS.

Because only the direct result determination is before us on appeal, our factual recitation will be abbreviated. The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that she reached maximum medical improvement on June 2, 1992, with an impairment rating of 18%; that she did not commute her impairment income benefits; and that the 22nd quarter of SIBS ran from September 11 to December 10, 1998, with a corresponding filing period of June 12 to September 10, 1998. The claimant testified that on the date of injury she was employed in the cafeteria of a school, when she slipped in grease on the floor and fell, landing on her back. The claimant identified five employers with whom she applied in the filing period on her Statement of Employment Status (TWCC-52). She testified that she also contacted several other employers in the filing period and, as noted above, the hearing officer made an unappealed finding that the claimant had made a good faith search for employment commensurate with her abilities. In her direct testimony, the claimant testified that she "supposed" that the employers she contacted were hiring, that she finds the places where she applies by going around and asking if there are jobs available, and that she looks in the Spanish-language newspaper for employment opportunities but that there are not "too many" jobs advertised within her restrictions. On cross-examination, the claimant testified that "many" of the employers she contacted in the filing period would not give her applications to complete and she thought that was because they were not hiring. However, at another point in her testimony, the claimant stated that she does not know whether or not the employers she contacted in the filing period were hiring and that even if they were not hiring at that time, she still completed an application because it would be on file in the event the employer had openings in the future.

In a report of June 9, 1998, Dr. S, who examined the claimant at the request of the self-insured, noted that Dr. O, a former treating doctor, "indefinitely placed" the claimant on restrictions, occasionally lifting no greater than 20 pounds floor to waist. In addition, Dr. S noted that a functional capacity evaluation of May 22, 1992, "indicated that she was operating at a light-work classification." Dr. S opined:

There are no physical limitations on today's evaluation that would prevent her from returning to the work force full duty in a light to medium job classification.

In progress notes of a July 9, 1998, visit, Dr. D, the claimant's current treating doctor, states that the claimant "has been disabled since 1992." In notes from an August 13, 1998, visit, Dr. D states that he encouraged the claimant to "continue trying to find some light duty work . . . ."

The hearing officer determined that the claimant's unemployment in the filing period was not a direct result of her impairment. In her discussion section, the hearing officer states:

[I]t is this Hearing Officer's finding that the Claimant made a good faith effort to seek employment. However, it does not appear that the Claimant's unemployment is a direct result of the impairment from the compensable injury. According to the medical evidence [Dr. S], an independent medical examiner, in a report dated June 9, 1998 stated "there are no physical limitations on today's evaluation that would prevent her from returning to the work force full-duty in a light to medium job classification." The jobs Claimant sought during the filing period were of a light to medium type classification. It does not appear from the evidence that the Claimant was unable to obtain employment because of her impairment but due to the unavailability of jobs in her area of residency. The Claimant is therefore not entitled to [SIBS] for the 22nd quarter. (Emphasis added.)

The hearing officer is the sole judge of the weight and credibility to be given to the evidence before her. Section 410.165(a). The question of whether the claimant's unemployment in the filing period was a direct result of her impairment was a factual question for the hearing officer to resolve. As a result, it is subject to reversal on appeal only if it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The hearing officer stated that the claimant's unemployment was not a direct result of her impairment "but due to the unavailability of jobs in her area of residency." Thus, it appears that the primary focus of the hearing officer's direct result determination was the perceived poor economy in the city where the claimant lives, as "evidenced" by the claimant's testimony that many of the employers who would not give her applications did not have openings and were not hiring. We have previously rejected the argument that evidence that employers contacted by a claimant in the filing period had no current openings was proof of generally poor economic conditions

in an area of such a nature as to warrant a determination that the claimant's unemployment was not a direct result of her impairment but rather poor economic conditions. Texas Workers' Compensation Commission Appeal No. 951019, decided August 4, 1995; Texas Workers' Compensation Commission Appeal No. 950849, decided July 7, 1995; *see also* Texas Workers' Compensation Commission Appeal No. 981408, decided August 10, 1998. In Appeal Nos. 951019 and 950849, a hearing officer's decision that a claimant was not entitled to SIBS, which was premised upon a finding that the claimant's unemployment was not a direct result of his or her impairment because of evidence that several employers the claimant contacted in the filing period were not hiring, was reversed and a new decision rendered that the claimant was entitled to SIBS for the quarters at issue. Similarly, in Texas Workers' Compensation Commission Appeal No. 960818, decided June 3, 1996, we reversed a determination that the claimant's unemployment was not a direct result of his impairment as not being supported by any probative evidence. In so doing Appeal No. 960818 stated:

[W]hen the unemployment is determined to be a direct result of economic conditions, it must be a situation where the general economic conditions in the area impact all workers and not just a situation where particular employers may not have openings. Texas Workers' Compensation Commission Appeal No. 950849, decided July 7, 1995; Texas Workers' Compensation Commission Appeal No. 952082, decided January 10, 1996. If this is considered to be a direct result of unemployment, it must be established by evidence and not conjecture. While the claimant did opine that the unemployment rate was "different" in the area of the hearing as opposed to where carrier's counsel lived, this evidence, if it is evidence at all, is insufficient to support the hearing officer's determination.

*See also* Texas Workers' Compensation Commission Appeal No. 971524, decided September 18, 1997 ("economic force which affect the population at large are not . . . proven up through the individual efforts of a job seeker").

In this instance, as in Appeal Nos. 950849, 951019, 960818 and 981408, there is insufficient evidence to support the hearing officer's determination that the claimant's unemployment is a result of a poor economy. Vague testimony from the claimant that "many" employers were not hiring at the time she contacted them does not support a determination that the claimant's unemployment in the filing period was a result of overall poor economic conditions and not a direct result of her impairment. In her decision, the hearing officer acknowledged the claimant's impairment, which restricts her to light to medium duty. The existence of other factors that may have contributed to the claimant's unemployment does not negate the impact of that impairment on the claimant's unemployment. Our review of the record demonstrates that the determination that the claimant's unemployment was not a direct result of her impairment is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, under the guidance of Appeal Nos. 950849, 951019, 960818 and 981408, we reverse the hearing officer's direct result determination and render a new determination that the claimant's unemployment was a direct result of her impairment.

Given our reversal of the direct result determination, we likewise reverse the hearing officer's determination that the claimant is not entitled to SIBS for the 22nd quarter and render a new decision that she is entitled to those benefits. The carrier is ordered to pay 22nd quarter SIBS in accordance with this decision.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Judy L. Stephens  
Appeals Judge