APPEAL NO. 990391

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 28, 1999. On the single issue before her, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the first compensable quarter. The claimant appeals several findings of fact and conclusions of law and urges that she was not able to work during the filing period, was going to classes in cooperation with the Texas Rehabilitation Commission (TRC), had not been released by her doctor to work, and established her entitlement to SIBS for the first compensable quarter. The respondent (carrier) acknowledges a typographical error in one finding and otherwise urges that there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer.

DECISION

Affirmed.

Initially, we note that a date reflected in one of the findings of fact cited by the claimant contains a typographical error. It lists the date of the report of Dr. L as "10-12-97" and the report in evidence shows that the date should be "10-12-98." We make that correction for purposes of this review and find no prejudicial error from the mistake.

The issue in this case involves entitlement to SIBS for the first compensable quarter, the filing period for which ran from August 1 to October 30, 1998, during which time the claimant did not seek any employment and urged that she was not able to work because of her injury. The claimant testified that she sustained a carpal tunnel syndrome (CTS) injury on _____, and subsequently had surgery for this injury. A report in evidence shows that she was certified at maximum medical improvement (MMI) on December 19, 1997, and assessed a 15% impairment rating (contribution was apparently assessed for an earlier injury). The claimant indicated that she had a prior, unrelated to the current claim, CTS injury in 1995 and had undergone surgery in 1995. She also indicated that at some undisclosed time she had an unrelated neck injury and that she was being treated by her chiropractic doctor for that condition as well as her CTS. In any event, she states her doctor, Dr. C, has never released her to work and a "To whom it may concern" letter dated December 18, 1998, from Dr. C indicates disagreement with other reports and states that the claimant was not able to perform any type work during the filing period. A report of October 12, 1998, from Dr. L gives an assessment of "bilateral upper extremity pain, possibly associated with persistent versus recurrent [CTS] versus anterior interosseous syndrome on the right. 2) possible ulnar neuropathy on the left."

Other medical records offered by the carrier indicate opinions that the claimant has an ability to work. Dr. N, in a November 9, 1997, report, states that the claimant has reached MMI and may return to regular-duty work. Dr. LE indicates in a medical note of July 21, 1997, that he is of the opinion that the claimant can return to light duty. A

functional capacity evaluation of March 10, 1998, mentions invalid efforts and indicates current performance levels within the U.S. Department of Labor's description of sedentary work. The claimant stated she has not looked for any work, that she has ongoing problems related to her CTS injury, that she has not been released to work by her doctor, and that she hopes eventually to go back to work without all the repetitive actions of typing and clerical work. A lack of a release to work is not dispositive of an issue regarding no ability to work. Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994. She also states that she has worked with the TRC and started classes in August 1998 (no further specifics) and that she hoped to finish her studies in May 1999 and work with the TRC regarding possible employment with her previous employer.

Two of the requirements for qualifying for SIBS are that the employee has not returned to work as a direct result of the impairment and that the employee has attempted in good faith to obtain employment commensurate with the ability to work. Section 408.142. From the conflicting evidence before her, the hearing officer determined that the claimant had some ability to work during the filing period, that she did not seek any employment during the filing period and that she was not excused from making a good faith effort to seek employment commensurate with her abilities. The hearing officer also found that the preponderance of the evidence did not establish that claimant's unemployment during the filing period was a direct result of her impairment. Where it is established that there is no ability to work, the requirement to attempt in good faith to obtain employment commensurate with the ability to work can be satisfied even though no jobs are sought. Texas Workers' Compensation Appeal No. 931147, decided February 3, 1994. The burden is on to claimant to prove no ability to work and there must be medical evidence showing no ability to work. Texas Workers' Compensation Commission Appeal No. 950173, decided March 17, 1995. Where, as here, there is a conflict in the medical evidence as to an ability to work, the hearing officer resolves such conflicts and makes factual determination. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Here, she, found the medical evidence supporting an ability to work to be the more persuasive, and determined that the claimant's unemployment was not the direct result of the impairment. From our review of the evidence we cannot conclude that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or 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).

The claimant also indicated that she was taking courses under the auspices of the TRC during the filing period. While a full course of study under the auspices of the TRC may, under appropriate circumstance, satisfy the good faith requirement, each case tends to be fact specific as to whether the good faith requirement has been met. Texas Workers' Compensation Commission Appeal No. 981804, decided September 14, 1998. *Compare,* Texas Workers' Compensation Commission Appeal No. 970086, decided March 3, 1997, and Texas Workers' Compensation Commission Appeal No. 961476, decided September 11, 1996. There was no specific information or evidence offered concerning the program the claimant was in, how much time she spent in the program, or how many course hours of study she was taking; however, the main thrust of her position seemed to rest on the

argument that she was not medically able to work during the period in issue. From the conflicting evidence, the hearing officer did not find that to be the case here.

Finding sufficient evidence to support the findings, conclusions, and decision of the hearing officer and no reversible error, we affirm the decision and order.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge