

APPEAL NO. 990423

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 8, 1999, a hearing was held. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the fifth compensable quarter; she also found that claimant's earnings in the filing period in question were \$1,435.57. Appellant (carrier) asserts that the decision is against the great weight of the evidence, citing the lack of documentary evidence to support claimant's assertion that his self-employment constitutes a good faith effort to find work. While carrier also asserted error as to a finding of fact and conclusion of law that provided claimant's total earnings, it did not attack the specific amounts found but asserted that claimant could have made more had he had a job. Claimant responded that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_. The parties stipulated that a compensable injury occurred, that the impairment rating was 15% or more, that no commutation of benefits occurred, that the filing period began on September 15, 1998, and that claimant's preinjury wage was \$606.10 per week. Carrier did not address a finding of fact on appeal that said claimant's underemployment was a direct result of the impairment. Therefore, this opinion will not discuss the medical opinion concerning claimant or restrictions he has.

Claimant stated that he and a partner have a business that sells a service of providing promotional products and medical and safety products. He testified that he regularly goes to office buildings and presents his service to the tenants and provides flyers. He designs products such as logo shirts but the manufacturing is done elsewhere. He said he spends as much as 70 hours a week on this business. He provided invoices and copies of checks he received. He said that he attended at least one trade show that was within the filing period involved. The amount of \$1,435.57 found by the hearing officer as his earnings in the filing period in issue is the amount of earnings claimant provided in his application for SIBS for this quarter.

Carrier questioned whether claimant could show a good faith effort to find work through self-employment without providing tax records, bank statements, financial statements and the like. While the Appeals Panel has said that a claimant "should" provide tax records and business records to show good faith (see Texas Workers' Compensation Commission Appeal No. 951296, decided September 20, 1995), other opinions have not required such records in order to qualify for SIBS. Texas Workers' Compensation Commission Appeal No. 970519, decided April 30, 1997, in stating that certain expenses could be deducted from the earnings of a self-employment in determining whether SIBS were due, only referred to a "summary report" of expenses and income. While a CPA

testified, he only testified as to the "summary report." When Texas Workers' Compensation Commission Appeal No. 971295, decided August 25, 1997, reversed a decision awarding SIBS for self-employment and rendered that no SIBS were due, it did so on the basis that claimant did not make an effort to contact potential buyers for her product.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could consider that claimant's testimony showed that he was actively soliciting business and that the invoice and checks he submitted were records supporting his testimony as to earnings. She was not bound to require tax documents and business records for claimant to show a good faith effort under Appeal No. 970519, *supra*, even though under other circumstances it may have been determined that good faith was not shown without better documentation through records of the business. The question of whether good faith was shown is a factual one which will not be overturned unless against the great weight and preponderance of the evidence; at this time this decision is not contrary to Appeals Panel decisions and is not against the great weight of the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Tommy W. Lueders  
Appeals Judge