

APPEAL NO. 990434

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 3, 1999. She (hearing officer) determined that the appellant (claimant) had some ability to work, that she did not meet the good faith requirement, and that she is not entitled to supplemental income benefits (SIBS) for the 12th and 13th quarters. Claimant appeals, contending that she met her burden to prove that she was acting in good faith. The direct result finding in claimant's favor was not appealed. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she is not entitled to SIBS for the 12th and 13th quarters. She contends that she met her burden regarding the good faith criteria because she sought approximately 40 jobs during the filing periods for the two quarters in question. Claimant complains that the hearing officer should have given favorable consideration to the fact that she sought housekeeping work because that is the kind of work she has done in the past. Claimant contends that she applied for the housekeeping jobs as advertised even though she was not certain the jobs were within her restrictions, because she sought to make a good faith effort to find work.

The parties stipulated that: (1) claimant sustained a compensable injury on \_\_\_\_\_; (2) claimant had an impairment rating (IR) of 15% or greater; and (3) claimant did not commute any of her impairment income benefits (IIBS). The filing period for the 12th quarter was from April 22, 1998, through July 21, 1998, and the filing period for the 13th quarter was from July 22, 1998, through October 21, 1998.

Claimant testified that she injured her back, head, arms, and legs on \_\_\_\_\_, when she fell down stairs while working as a housekeeper. She said she was treated for back pain by Dr. C during the filing period. Claimant said she has not worked since her injury. Claimant testified regarding her job search for the two filing periods and said she obtained job leads from the newspaper and from the employment office. She said she went to the employers' premises to apply, that she was not sure whether she was capable of performing the work, and said that she would try if offered a job. Claimant said she is a student taking computer classes and that she has taken five computer courses since December 1997.

In a February 8, 1995, medical record, Dr. R stated that a \_\_\_\_\_ MRI showed "disc herniation at L1-L2 and L2-L3." In a March 6, 1998, medical note, Dr. C stated that claimant is unable to work. In a November 6, 1998, medical note, Dr. C stated that claimant is able to work but that she is restricted from sitting and standing for periods of time, lifting over two or three pounds, bending, or performing strenuous activities. Dr. C

stated that claimant's diagnosis is "disc herniation, L1-L2, L2-3" and lumbar sprain with radicular involvement. In a January 22, 1999, medical note, Dr. C stated that claimant cannot perform exercises, that she has acute pain when sitting, walking, or standing for periods of time, and that she should "keep bed rest whenever possible." Other medical reports questioned whether claimant had disc herniations versus disc bulges.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the IIBS period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBS; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In this case, our review of the record does not indicate that the hearing officer's good faith determinations regarding the 12th and 13th compensable quarters are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain. Therefore, there is no basis for disturbing her decision on appeal. The hearing officer heard claimant's testimony about her job search and determined that claimant was not making a good faith effort to seek jobs that she was capable of performing. The hearing officer apparently determined that claimant should search for sedentary work within her restrictions in order to meet the good faith job search requirement. The fact that the evidence could have allowed different inferences under the state of the evidence does not provide a sufficient basis for reversing the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge