

APPEAL NO. 990461

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. He determined that the appellant (claimant) did not meet the good faith job search requirement, that his unemployment was not a direct result of his impairment, and that he is not entitled to supplemental income benefits (SIBS) for the seventh quarter. Claimant appeals, contending that he met his burden to prove that he was acting in good faith and that he met the direct result criterion. 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 he is not entitled to SIBS for the seventh quarter. He contends that he met his burden regarding the good faith criteria because he contacted approximately 37 employers for work, 11 of whom were actually hiring. Claimant contends that he returned to the same employers he had contacted in prior quarters because he wanted to find a job. Claimant also contends that his unemployment during the filing period was a direct result of his impairment.

The parties stipulated that: (1) claimant had an impairment rating (IR) of 15%;(2) claimant did not commute any of his impairment income benefits (IIBS); and (3) the seventh quarter was from October 31, 1998, to January 29, 1999.

Claimant testified that he was working placing seismographic cones into the ground on _____, when he bent over and felt pain in his back. Claimant said he treated with Dr. S and that his restrictions are that he cannot walk for long periods, bend all the way down, or lift over 46 to 50 pounds. Claimant said that, during the filing period, he contacted 37 employers, 11 of whom had job openings. Claimant said three employers interviewed him, but he did not obtain a job. Claimant said he has been taking classes to learn English for over one year and that he is registered with the Texas Rehabilitation Commission (TRC). An October 8, 1998, letter from the TRC states that claimant is attending classes to learn English. Claimant said that he registered with the Texas Workforce Commission and that he contacts them about once per month. In a July 1996 medical report, Dr. SU stated that claimant's diagnoses included chronic lumbar strain, lumbar facet syndrome, lumbar segmental dysfunction, and muscle spasms.

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.

The hearing officer heard claimant's testimony about his job search and determined that claimant's testimony "was not credible." The hearing officer determined that claimant did not make a good faith effort to search for employment. Our review of the record does not indicate that the hearing officer's good faith and direct result determinations regarding the seventh 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.

Claimant contends the hearing officer erred in determining that he "can lift up to 50 pounds." Claimant contends that he cannot lift over 50 pounds. Given claimant's representation on appeal, we perceive no error.

Claimant asserts that the hearing officer erred in determining that he could return to his former employment. There was evidence from Dr. S dated in May 1996 that claimant had completed work hardening and that he could return to work as a seismic prospector helper. There was evidence that claimant could not do the bending required by his former work. However, the hearing officer was the sole judge of the credibility of the evidence and he decided what weight to give to the evidence. The hearing officer could and did find from the evidence that claimant could return to his former employment.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge