APPEAL NO. 990466

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 5, 1999, a contested case hearing was held. With respect to the issues before her, the hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBS) for the fourth compensable quarter and that he did not permanently lose entitlement to SIBS.[1] Appellant (carrier) appeals the good faith and direct result determinations on sufficiency grounds. Carrier also appeals the determination that claimant did not permanently lose entitlement to SIBS. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant was entitled to SIBS for the fourth compensable quarter. Carrier contends that claimant did not meet his burden to prove the good faith criterion.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the impairment income benefits (IIBS) period expires if the employee has: (1) an impairment rating (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. Although the claimant's good faith effort must, generally, span the filing period, the Appeals Panel has stated that a claimant's job search does not have to encompass a certain length of time. Texas Workers' Compensation Commission Appeal No. 961454, decided September 11, 1996; Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. There is no requirement that a claimant look for work every day of the filing period. Texas Workers' Compensation Commission Appeal No. 960818, decided June 3, 1996. 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 is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been 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.

[1]Conclusion of Law No. 3 states that claimant is "not entitled" to SIBS. This is an obvious typographical error and we reform it to state that claimant is entitled to SIBS for the fourth compensable quarter.

The parties stipulated that: (1) claimant sustained a compensable low back injury on _____; (2) claimant's IR was 23%; (3) claimant did not elect to commute his IIBS; and (4) the filing period for the fourth compensable quarter was from July 21, 1998, to October 19, 1998.

Claimant testified that he was working as a senior engineering technician on _____, when he sustained a work-related injury. Claimant said he picked up a compression tank and damaged "the L4-5 disc." Claimant said Dr. RO performed a diskectomy in March 1996 and that he is still being treated for pain. He said he can perform work as long as it is within his restrictions. Claimant said he moved from Texas to another state to live with and work for his brother. He indicated that he left that job in June 1998 to go to yet another state because "high tech" jobs were more plentiful there. Claimant testified that the job for his brother involved yardwork, answering phones, and running errands. He said living with his brother was an uncomfortable situation, that his brother is married, and that he did not feel he could make a living working for his brother. Claimant said that, during the filing period in question, he sought about 54 jobs by going to the site to apply or occasionally seeking work by telephone. He said he also sought retraining with the employment commission in the state in which he now lives. An attachment to claimant's Statement of Employment Status (TWCC-52) indicated that he sought work or training with 59 employers regarding such jobs as manager, general help, parts delivery, medical device technician, engineering technician, receptionist, and "slot repair."

In a January 10, 1997, report, Dr. DO, apparently the designated doctor in this case, stated that claimant was employed by (employer) for six years and that:

> [h]is job as an electronics technician did not require any extensive lifting or constant bending; however, on the day of his injury he was attempting to lift a large compression tank into the back of his truck . . . .

Dr. DO noted that "[claimant] state[d] that this job was fairly sedentary in nature as he was not required to do any heavy lifting." On a January 13, 1997, disability case management form, Dr. RO checked a blank indicating that "the patient [can] perform his job as outlined in this job description . . . ." The job description was not attached.

On a June 1, 1998, report, Dr. C stated:

> [Claimant] was injured on the job with a low back injury. He underwent an L4-5 diskectomy. He was given an [IR] of 23% and permanent restrictions of 20 lbs. with no repetitive bending and pushing. Apparently his benefits ran out in January 1998. He had to move from Texas because he lost his job and they would not rehire him.

Dr. C said he would see claimant as needed and that he prescribed Duract for claimant's pain. In a September 10, 1998, work capacity evaluation report, Dr. P stated that claimant may lift 20 pounds occasionally, carry 10 pounds occasionally, and that he is restricted

regarding standing, walking, sitting, climbing, stooping, and crouching. Dr. P further stated that claimant is able to do part-time work and that he may return to his previous occupation.

The hearing officer determined that: (1) claimant was released to regular duty which included his former employment, a sedentary job; (2) claimant had work restrictions, including restrictions on lifting and carrying; (3) claimant sustained significant lasting effects from his injury, with permanent restrictions; (4) claimant applied for positions commensurate with his ability to work; (5) claimant acted in good faith; and (6) claimant's unemployment was a direct result of his impairment.

In this case, the hearing officer heard claimant's testimony about his job search and reviewed evidence regarding his limitations. She was the sole judge of the credibility of the evidence. Our review of the record does not indicate that the hearing officer's good faith determination regarding the fourth compensable quarter is 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 her decision on appeal. Carrier contends that claimant did not act in good faith because he did not apply for work within his restrictions, he quit his job with his brother, he did not work with his doctor to see what work he could do, and he did not explain to prospective employers the nature of his restrictions and the fact that doctors had released him to return to his former job. These facts were for the hearing officer to consider in making her determination regarding good faith. We have reviewed the record and we conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The hearing officer's direct result determination is also sufficiently supported by evidence that claimant sustained a serious injury with lasting effects and that, during the filing period, he could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 93559, decided August 20, 1993; Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996. The evidence that claimant continues to have work restrictions also supports the hearing officer's direct result determination. Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. Carrier complains that claimant did not meet the direct result criterion because he had been released to perform his former job. However, the fact that claimant was released to do his former work is not determinative of the direct result issue. Texas Workers' Compensation Commission Appeal No. 982993, decided February 5, 1999. The hearing officer could make a direct result finding in claimant's favor based on the evidence in the record. Carrier asserts that claimant's former job was not a sedentary job. However, the hearing officer could find from the evidence set forth above that claimant's job was sedentary. Carrier asserts that the Appeals Panel had modified clear statutory language regarding direct result in its decision in Appeal No. 982993. However, in that decision, the Appeals Panel merely sought to give guidance regarding the analysis of the direct result issue. Regarding permanent loss of SIBS entitlement, given the fact that we affirm the determination that claimant is entitled to SIBS for the fourth quarter, we conclude that the hearing officer did not err in this regard.

We affirm the hearing officer's decision and order.

_____
Judy Stephens
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

CONCUR IN RESULT:

_____
Joe Sebesta
Appeals Judge