

## APPEAL NO. 990496

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 12, 1999, a contested case hearing (CCH) was held. The issue concerned whether the appellant, who is the claimant, was entitled to the fifth and sixth quarters of supplemental income benefits (SIBS).

The hearing officer agreed that the claimant's unemployment or underemployment for the periods in question was the direct result of her impairment. However, she held that she had not made a good faith search for employment commensurate with her ability to work, which the hearing officer held was not limited to only part-time work. The hearing officer held that claimant, although employed part time, had the duty to search for full-time work and her failure to do so rendered her ineligible for SIBS. The hearing officer further held that the Statement of Employment Status (TWCC-52) for the fifth quarter was filed late, in its complete form, on December 10, 1998, and the carrier would, in the alternative, be relieved of liability for SIBS for that quarter until the completed report was filed.

The claimant appeals. The claimant generally asserts that the finding of nonentitlement is against the great weight and preponderance of the evidence. On the untimely TWCC-52, the claimant asserts that only notice to the carrier of an application for SIBS is required and this was supplied by the first TWCC-52 even if wages were omitted. The carrier responds that the decision is fully supported by the evidence and should be affirmed.

### DECISION

Affirmed.

The primary injury and impairment in issue is a psychological one, as the physical injury was relatively brief and limited. Claimant sustained an inhalation injury on \_\_\_\_\_, while employed by (employer). There is evidence that while there is no persisting physical injury, claimant has been treated for posttraumatic stress syndrome. There was no objective evidence of continuing pulmonary or bronchial problems stemming from this inhalation. The designated doctor assigned over a 15% impairment rating (IR) in a report that declined to assign a higher IR because of symptom exaggeration.

The fifth quarter for SIBS ran from October 24, 1998, through January 22, 1999 (the filing period was thus the preceding quarter). The sixth quarter ran from January 22 through April 22, 1999 (and the filing period was likewise the preceding quarter). Claimant contended she had returned to work because she was advised at a benefit review conference (BRC) to seek light duty. She became a personal care giver effective September 1, 1998, and continued to work at same until sometime in February 1999. Claimant said she initially did not disclose wages because she was confused by the TWCC-52; she "didn't understand what that was all about." Claimant contended she was unable to

work more than four hours a day, from 8:00 am until noon, and attributed this apparently to her need to take more powerful medication during the afternoon. She also stated generally that her limitation was due to her doctor's advice.

We will summarize again evidence that was presented at an earlier CCH and again at this CCH. Records from the previous hearing for the fourth quarter are in evidence with no objection, as well as an earlier hearing decision for the fourth quarter and related Appeals Panel decision, Texas Workers' Compensation Commission Appeal No. 982447, decided November 24, 1998. The claimant was examined by Dr. T on May 4, 1998. Claimant is in her early 40s in age, but Dr. T noted that she used a walker to ambulate, and it took her 10 minutes to walk 100 feet up to his office. He noted that she was emotional, forgetful, and complained of numerous physical and emotional syndromes. However, Dr. T noted various inconsistencies and bizarre behavior throughout his examination which caused him to terminate objective testing because he felt that he was not getting valid results. For example, Dr. T noted that claimant had errors in testing of her reading that "were unlike those I have seen with any type of genuine neurological disorder." Dr. T noted that when asked to read the Bible as opposed to reading test sentences, the claimant read essentially without error, except for a few mispronunciations. He noted that she was able to perform relatively complex tasks even while she appeared to fail simple ones. He noted various other stresses in her life, including the breakup of her marriage. Dr. T's notes documented someone who needed assistance to rise from her chair. He diagnosed major depressive disorder without psychotic features and chronic posttraumatic stress disorder, but also stated he could not exclude partial malingering. Dr. T noted that claimant continued to subjectively regard herself as extremely impaired, although many of her reported symptoms bore no relationship to known effects of inhaling the particular substance in question.

Dr. T's observations are in marked contrast to surveillance reports conducted of claimant in February, July, and November 1998. The reports document claimant going to her car, driving, carrying garbage, climbing her front stairs, walking and laughing with a companion, shopping, banking, and leaning into a car window to talk with the occupant, all with no apparent deficit or pain.

Claimant offered the opinion of Dr. F, who stated on May 7, 1998, that claimant had been hospitalized on March 19, 1998, due to her severe anxiety and inability to function because of flashbacks and trauma from her chemical exposure. He recommended further therapy and counseling for phobia reduction. The necessity of the hospitalization was questioned by Dr. PR, who reviewed claimant's medical and treatment records but did not examine her. The hospitalization report of Dr. F recites a history of claimant having been involved in a "chemical explosion." There are copies of what appear to be form letters from Dr. F stating that the claimant would not be able to function at work; the dates of February 3 and March 3, 1998, have been typed at the top of the letters in a different typeset. Another similarly worded letter, but in a different, uniform font, is dated July 8, 1998.

Other medical evidence and the testimony of a nurse consultant presented more conflicting evidence of the extent of claimant's claimed inability to function. The claimant asserted that she did not think she could work more than part time because she took stronger medication in the afternoon. Claimant took medication in the morning as well. She also generally stated that her assessment of part-time ability was based on what her doctor said, although there was no new medical evidence in the record that had not been presented before when she contended complete inability to work. The care giving work claimant performed was in the nature of a "sitting" job and she also helped the patient she watched with some personal care activities. She said that at first she earned \$300.00 per month, and then was paid \$210.00 every two weeks beginning January 8, 1999. Initially, she watched the patient on a private basis and then went to work for (employer) to watch the same person when he was enrolled through that service. The claimant did not offer evidence from her doctor as to the effects of medication on her ability to work greater hours.

On October 15, 1998, claimant completed a TWCC-52 in which she stated she was unable to work and no job searches were detailed. The carrier responded to this promptly by requesting a BRC. She agreed that this was not accurate because of her confusion. A subsequent, amended report was filed, and date stamped at the top as received by the carrier on a facsimile transmission on December 10, 1998. This listed her wages and set out five job contacts that had been made. The sixth quarter application listed claimant's wages.

We start with the basic proposition that, whatever the evidence, the hearing officer is the sole judge of weight and credibility. The observations that claimant may be exaggerating the effects of her illness, the lack of objective evidence, and the matter of the TWCC-52 which did not disclose wages or the fact that claimant was working, are all matters that did not enhance her credibility. We will not second guess the hearing officer's observations of demeanor or her evaluation of written evidence.

As the claimant had employment during much of the quarters in question, the issue therefore became if she sought work commensurate with her ability to work. If her ability to work were proven by medical, credible evidence to be part time only, then a finding in her favor would be in order. On this matter, we find sufficient evidence to support the hearing officer's determination that the claimant did not make a good faith search for employment commensurate with her ability to work.

Regarding whether the fifth quarter TWCC-52 statement was so incomplete as to equate to a failure to file, such that benefits would not begin until the date the amended statement was filed under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.105(g)(Rule 130.105(g)), we disagree with the claimant that the purpose of the TWCC-52 is merely to convey notice that a claim for SIBS is made. The TWCC-52 provides information on which the carrier can make the decision in favor of or against entitlement. We have held that where earned wages are not disclosed at all, the incompleteness in the TWCC-52 is so

material that it is tantamount to not filing that form at all. Texas Workers' Compensation Commission Appeal No. 960025, decided February 15, 1996.

For these reasons, we affirm the hearing officer's decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge