APPEAL NO. 990519

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 17, 1999. With respect to the sole issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the seventh quarter of October 20, 1998, to January 18, 1999. In her appeal, the claimant argues that the hearing officer's determinations that she did not make a good faith job search in the filing period, that her unemployment was not a direct result of her impairment, and that she is not entitled to seventh quarter SIBS are against the great weight of the evidence. In its response, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on November 28, 1995, with an impairment rating of 24%; that she did not commute her impairment income benefits; and that the seventh quarter of SIBS ran from October 20, 1998, to January 18, 1999, with a corresponding filing period of July 22, 1998, to October 19, 1998. The claimant testified that she was employed as a nurse's assistant on the date of her injury and that she had been so employed for approximately four years. She stated that she was injured when she slipped on something in the hallway and fell to the floor, injuring her back, right hip, and leg.

The claimant testified that she had not been released to return to work by Dr. G, her treating doctor, in the filing period. She stated that she nevertheless looked for work. Specifically, she testified that she contacted seven potential employers and was interviewed by two of the employers. As the hearing officer noted, the claimant made no job searches in July, one in August, six in September, and none in October. She explained that she did not make more job contacts because she did not have the income to go out looking for work, she did not have a car, and she had to stay home to care for her daughter, who has a heart condition. In addition, the claimant testified that her ability to look for work was limited because she attended a work hardening program five days per week, eight hours per day for the period from September 14th to October 9th and most personnel offices closed shortly after she finished work hardening for the day. The self-insured introduced a report from the work hardening program stating that the claimant only attended two sessions of the program and that she was discharged from the program for non-compliance. The claimant denied that she had not attended work hardening and that she was discharged for noncompliance. She explained that she missed two sessions when she was completing testing for two employers with whom she had filed an application and that she called to report those absences to the work hardening program. In a report of September 15, 1998, Dr. G stated that the claimant “has currently been in the work hardening program but relates that she feels she is unable to do eight hours a day due to child care issues.”

On October 13, 1998, the claimant underwent a functional capacity evaluation (FCE). That testing revealed that the claimant could work at the "middle end of the medium level work category; exerting force from 20 lbs. to 50 lbs. on an occasional basis." The FCE report, also states under the previous treatment section:

> Work Hardening at [Dr. G's] facility; patient completed only three of the five prescribed weeks. Her last visit to Work Hardening was last month. Patient reports she stopped her Work Hardening because she was also interviewing for jobs and she was unable to do both.

The claimant denied giving that history, again insisting that she completed the work hardening program.

The hearing officer determined that the claimant did not make a good faith effort to look for work in the relevant filing period. That question presented a question of fact for the hearing officer. It was the hearing officer's responsibility, as the sole judge of the evidence under Section 410.165(a), to consider the evidence concerning the claimant's job search efforts in the filing period and to determine if the claimant sustained her burden of proving a good faith job search. In making his good faith determination, the hearing officer was free to consider the number of employment contacts made and the nature of those contacts. To that end, the hearing officer noted that the claimant only made a limited number of searches over a small portion of the filing period. The claimant correctly noted that those factors are not, in and of themselves, determinative of the good faith question. However, the hearing officer also recognized that fact as is evidenced by his discussion:

> While no specific number of job applications are required to show good faith, applying for only 7 jobs in a short period of time in the middle of the filing period is not good faith, especially, when Claimant's testimony, also, indicates a lack of good faith.

The hearing officer was free to consider the nature of the claimant's search and to resolve the conflicts and inconsistencies in the evidence against the claimant. After reviewing the testimony and evidence, the hearing officer simply was not persuaded that the claimant had sustained her burden of proof. Our review of the record does not reveal that the hearing officer's determinations that the claimant did not make a good faith effort to seek employment in the filing period for the seventh quarter is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co.715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant also asserts error in the determination that her unemployment in the filing period was not a direct result of her impairment. That question likewise presented an issue of fact for the hearing officer to resolve. We have previously recognized that generally a determination that the claimant's unemployment is a direct result of the impairment is sufficiently supported by evidence that the claimant sustained an injury with

lasting effects and could not reasonably perform the type of work she was doing at the time of her injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. However, the presence of that evidence does not mandate that the hearing officer resolve the direct result issue in favor of the claimant. The hearing officer was acting within his province as the fact finder in determining that the claimant did present sufficient evidence to persuade him that she had satisfied the direct result criterion. Our review of the record does not reveal that the direct result determination is so contrary to the great weight of the evidence as to compel its reversal. Pool, *supra*; Cain, *supra*. The fact that another fact finder could have reached a different result from the evidence does not provide a basis for us to reverse the determination on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Judy L. Stephens
Appeals Judge