

## APPEAL NO. 990522

On February 11, 1999, a contested case hearing (CCH) on remand was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The appellant (claimant) requests reversal of the hearing officer's decision on remand that he is not entitled to supplemental income benefits (SIBS) for the fourth quarter. No response was received from the respondent (self-insured).

### DECISION

Affirmed.

The fourth quarter was from December 26, 1997, to March 26, 1998, and the filing period for the fourth quarter was from September 26 to December 25, 1997 (the filing period). Claimant has an impairment rating of 15% or more and did not commute impairment income benefits. It is undisputed that during the filing period claimant did not work and did not look for any work. In Texas Workers' Compensation Commission Appeal No. 982879, decided January 20, 1999, the Appeals Panel reversed the hearing officer's decision that claimant is entitled to SIBS for the fourth quarter and remanded the case to the hearing officer for further consideration and development of the evidence. The evidence developed at the first CCH held on November 4, 1998, is summarized in Appeal No. 982879, *supra*. In the original CCH decision, the hearing officer made no finding that claimant was unable to work at all during the filing period, but instead found that during the filing period Dr. G did not release claimant to any type of work, that claimant did not look for work, and that claimant made good faith efforts to seek employment commensurate with his ability to work. However, in a report dated December 4, 1997, Dr. G noted that claimant had been released to return to full-time work at normal activity on November 20, 1997, which was during the filing period, and that claimant stated that he did not need a return-to-work slip because he is retired.

In Appeal No. 982879, the Appeals Panel concluded that the hearing officer's finding that claimant's unemployment during the filing period was a direct result of his impairment was supported by sufficient evidence and was not contrary to the great weight and preponderance of the evidence. However, in light of Dr. G's report of December 4, 1997, the Appeals Panel determined that the hearing officer's finding that Dr. G did not release claimant to any type of work during the filing period was so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Thus, the Appeals Panel reversed the hearing officer's findings that during the filing period Dr. G did not release claimant to any type of work and that claimant made good faith efforts to obtain employment commensurate with his ability to work. The Appeals Panel reversed the hearing officer's decision that claimant is entitled to SIBS for the fourth quarter and remanded the case for further consideration and development of the evidence.

At the CCH on remand held on February 11, 1999, no further testimony was presented. In his decision on remand, the hearing officer found that during the filing period claimant was capable of some work at a sedentary level on a part-time basis, that claimant did not look for work, and that claimant did not make a good faith effort to seek employment commensurate with his ability to work, and the hearing officer concluded that claimant is not entitled to SIBS for the fourth quarter. The claimant contends that Dr. G's December 4, 1997, report was in error and was rescinded in June 1998 and that he was not capable of doing any work during the filing period. Dr. G wrote in June 1998 that claimant "is unable to perform is [sic] job at this time." The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's findings that claimant had some ability to work during the filing period and did not make a good faith effort to obtain employment commensurate with his ability to work and his decision that claimant is not entitled to SIBS for the fourth quarter are supported by sufficient evidence and are not contrary to the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order on remand are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Elaine M. Chaney  
Appeals Judge