APPEAL NO. 990528

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 8, 1999, a hearing was held. That hearing officer found that appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 10th and 11th compensable quarters, and has permanently lost entitlement to SIBS. Claimant asserts that she has attempted in good faith to find employment during both quarters and should not lose her entitlement to SIBS permanently because she was so entitled for the quarters in issue. The appeals file contains no response from the respondent (state).

DECISION

We affirm.

Claimant worked as a cook for the (employer), when she hurt her back bending to clean the bottom of a stove on _____. The parties stipulated that claimant's injury is compensable, that her impairment rating is 19%, that she commuted no benefits, that the filing period for the 10th quarter began on December 3, 1996, and that the filing period for the 11th quarter began on March 4, 1997.

Claimant has had multiple spinal surgeries. Dr. D, her treating doctor, points out that her spine is fused from L-3 to the sacrum. He does not think that she can work. The hearing was nevertheless litigated as considering whether claimant's job searches, and the job she accepted, amounted to an attempt in good faith to find work. Dr. B, who evaluated claimant for the state, said in 1996 that claimant could do sedentary work for six to eight hours a day.

Claimant testified that she looked for work in the 10th filing period. She began work with (Employer No. 2) on February 27, 1997; she drove a van taking workers to job sites; she performed this service when called without a set number of hours per day.

Claimant testified that she looked for work with six employers, and followed up on each contact, which resulted in accepting the above job on February 27, 1997, approximately one week before the filing period for the 10th quarter expired. She stated that she worked two to eight hours a day when she worked. While no testimony stated the number of hours in a week that she averaged at work, payroll records in evidence indicate that she did not work over 40 hours in any two-week period. As such, she would be obligated to continue looking for work if the hearing officer gave weight to the opinion of Dr. B who said she could work six to eight hours a day; it may be implied from reading the hearing officer's opinion that this hearing officer gave significant weight to Dr. B's opinion. *See* Texas Workers' Compensation Commission Appeal No. 960480, decided April 24, 1996, which said that a claimant working fewer hours than allowed medically must continue to seek work up to the level allowed.

Claimant testified that she continued to solicit work from BB, one of the employers with whom she asked for work during the filing period for the 10th quarter, during the filing period of the 11th quarter even though she was working for Employer No. 2. There was no other evidence of job contacts in the filing period for the 11th quarter.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. While a hearing officer does not have to consider timing and forethought in determining good faith, he may consider these points just as he may consider many other points in determining whether good faith has been shown. *See* Texas Workers' Compensation Commission Appeal No. 961195, decided August 5, 1996.

The determination regarding good faith is a factual one for which the hearing officer will not be overturned unless it is against the great weight and preponderance of the evidence. The hearing officer could also consider claimant's testimony that she did not work on some occasions when called because she had to take her grandson, for whom she has custody, somewhere at the same time. The hearing officer could also have considered that such a conflict occurs in regular jobs for which a worker may or may not receive less pay. There was no evidence that claimant refused employment with a certain employer as to any job offered to her for which she was medically capable of performing. While another fact finder may have determined differently whether good faith existed, that is no basis for the Appeals Panel to overturn this decision. The determination that claimant did not attempt in good faith to find employment in both the filing period for the 10th and 11th quarters is not against the great weight and preponderance of the evidence.

We note that the decision may be affirmed on the basis of findings of fact that claimant did not attempt in good faith to find work. We do not have to remand to determine the conflict, if any, between Findings of Fact Nos. 5 and 7 and Findings of Fact Nos. 11 and 13, which deal with the direct result standard for the two filing periods.

With the hearing officer's determinations of no entitlement to the 10th and 11th quarters affirmed, the determination that claimant has lost entitlement to SIBS permanently may be affirmed also, based on the hearing officer's inclusion of copies of Texas Workers' Compensation Commission Appeal No. 962613, decided February 6, 1997, (Unpublished) and Texas Workers' Compensation Commission Appeal No. 971235, decided August 7, 1997, (Unpublished) which found no entitlement to SIBS for the eighth and ninth quarters.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Judy L. Stephens
Appeals Judge