

APPEAL NO. 990536

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 9, 1999. The issue at the CCH was whether the appellant (claimant) was entitled to supplemental income benefits (SIBS) for the 15th and 16th compensable quarters. The hearing officer determined that the claimant was not entitled to SIBS for either quarter. The claimant, in a timely filed appeal, urges that there is overwhelming evidence in the record that contradicts the determinations of the hearing officer that the claimant did not make a good faith effort to find employment commensurate with his ability to work during the filing periods for the quarters in issue and asks that the decision be reversed. The respondent (carrier) essentially argues that there is sufficient evidence to support the determinations of the hearing officer and that the claimant did not establish an entitlement to SIBS for either quarter.

DECISION

Affirmed.

The claimant, a 73-year-old gentleman, injured his back on the job on _____; subsequently had surgery in 1993; was assessed an impairment rating of more than 15%; and is seeking SIBS for the 15th and 16th quarters, the filing periods for which ran from June 24, 1998, through September 22, 1998, and September 23, 1998, through December 22, 1998. Although the claimant urged that he did not have any ability to work during the 15th quarter filing period, he testified and offered evidence that he unsuccessfully sought employment at some 19 or 20 prospective employers. The prospective jobs were sought during approximately 20 days of the 90-day filing period. At the end of the first filing period, he obtained a sales/display position with a company making a device to button blue jeans. At one point during this period, he went to (State 1) where his mother lived and while there set up a display. He also sought employment at one other place during this time frame. During the three-month filing period he states that he earned a total of \$40.00 with that company. Reports from a carrier vocational case manager, who worked with the claimant, indicate that several places the claimant indicated he had filed an application did not have any application on file.

Regarding the assertion of no ability to work during the filing period for the 15th quarter, the hearing officer states in his discussion that he found that based on a report from Dr. O, the claimant has the ability to do sedentary work. Very similar letters from the claimant's treating doctor in June 1998, September 1998, and December 1998 state the opinion that the claimant "is unable to work and will never be able to work because of pseudoclaudication of his lower extremities because of lumbar disk disease and pain upon walking." Dr. O examined the claimant in August 1998, and in a comprehensive report concludes that the claimant "should be able to do sedentary light and up to border-line medium work." While the pertinent medical evidence (see Texas Workers' Compensation Commission Appeal No. 950173, decided March 17, 1995) concerning the claimant's ability to work was in conflict, it was for the hearing officer to accord what weight he deemed

appropriate to the conflicting reports. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Section 410.165(a). We cannot conclude from our review of the evidence of record that the determination of the hearing officer was against the great weight and preponderance of the evidence. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

The hearing officer further found and concluded that the claimant did not make a good faith effort to obtain or seek employment commensurate with his ability to work during either filing period. In so doing, the hearing officer also notes that during the filing period for the 15th quarter, the claimant spent less than 20 days looking for work. Regarding the claimant sales/display arrangement, the hearing officer indicates that he did not find the claimant's testimony believable. The weight and credibility of a witness, including a claimant, is a matter for the hearing officer to determine. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ); Section 410.165(a). The Appeals Panel has generally defined good faith as a subjective notion characterized by honesty of purpose and being faithful to one's obligations. Texas Workers' Compensation Commission Appeal No. 941293, decided November 8, 1994 (unpublished). Whether the required good faith job search exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. We have also cautioned that good faith is not established simply by some minimum number of job contacts, but a hearing officer may consider "the manner in which the job search is undertaken with respect to timing, forethought and diligence." Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996.

From our review of the evidence, we cannot conclude that the findings, conclusions, and decision of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge