

## APPEAL NO. 990561

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 4, 1999. The issue at the CCH was whether the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the second compensable quarter, which ran from November 25, 1998, to February 23, 1999. The hearing officer determined that the claimant is entitled to SIBS for the second compensable quarter, from which determination appellant (carrier) appeals. Carrier contends that the hearing officer's determinations regarding good faith search for employment, direct result, and entitlement to SIBS are against the great weight and preponderance of the evidence and that the Appeals Panel should reverse them on appeal. The file contains no response from the claimant.

### DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant is entitled to SIBS for the second compensable quarter. Carrier contends that claimant contacted only 16 potential employers, that carrier was able to verify only 10 of the contacts, that claimant merely "dropped in" on employers without knowing whether there was an opening, and that claimant should have "put forth a broader effort" given his specific work abilities.

Claimant testified that he did not work during the filing period, but that he did look for work. He said he called and went in to home health care agencies and other employers seeking work. Claimant said he has been a welder for 23 years, but that he can no longer do that work. He said he sought work as a "helper," entry worker, clerk, and driver. Claimant said he cannot operate machinery because of dizziness, pain, and the results of insomnia. Claimant said some of the 23 employers listed on his Statement of Employment Status (TWCC-52) were duplicates because he would check back regarding the status of his application and ask to speak to a personnel manager. Claimant said he is registered with the Texas Rehabilitation Commission and the Texas Workforce Commission. He testified that he looked for work at least two days per week and that he checked the newspapers daily looking for work. Claimant said that, during the filing period, he had severe pain in his ears and that he had intermittent pain in his jaw. At the CCH, he said his jaw felt "dead." Claimant said that he did not know if he would be able to work if he obtained a job, but said he would try. He testified that it was very hard to make his job search because of his pain. A verification report offered by carrier stated that nine potential employers stated that claimant had an application on file and that one stated that he had made a follow-up call.

In a July 9, 1997, report, the designated doctor in claimant's case stated that claimant had a 26% impairment rating (IR) and that he had been injured when a "rather large chip gun (drill) fell about 20 feet and struck his left jaw." The doctor noted that claimant was still experiencing insomnia and quite a bit of excruciating pain and trouble with

mastication. In an August 22, 1998, report, Dr. W stated that claimant "is unable to work at this time"; that claimant has been diagnosed with TMJ syndrome; that he wears an oral splint in his mouth which causes discomfort and pain; and that claimant suffers from headaches, dizziness, and ear problems. In a November 30, 1998, letter, Dr. W stated:

I feel the constant pain that [claimant] has experienced from the onset of his injuries has greatly contributed to his inability to function in a learning or working environment. His inability to sleep or reduce pain medications has only contributed to his not being able to work or attend classes to learn new skills.

Several instructors indicated that claimant had been attending classes in pain and one referred to claimant as an excellent student.

It was undisputed that: (1) claimant sustained a compensable injury on \_\_\_\_\_; (2) claimant's IR was greater than or equal to 15%; (3) claimant did not elect to commute his impairment income benefits; and (4) the filing period for the second compensable quarter was from approximately August 26, 1998, to November 24, 1998.

In this case, our review of the record does not indicate that the hearing officer's good faith and SIBS determinations regarding the second compensable quarter are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Therefore, there is no basis for disturbing her decision on appeal. The hearing officer heard claimant's testimony about his physical problems during the filing period and his job search efforts. The evidence regarding how many employers claimant contacted and how many carrier was able to verify was for the hearing officer to consider in making her determinations in this case. The hearing officer also considered whether the manner and method of claimant's job search showed that he acted in good faith. The hearing officer apparently determined that claimant's job search effort was sufficient, given the work ability that she found he had. There is no specific number of job contacts which make an employee's efforts in good faith. Texas Workers' Compensation Commission Appeal No. 960107, decided February 23, 1996. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The fact that the evidence could have allowed different inferences under the state of the evidence does not provide a sufficient basis for reversing the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992.

Carrier contends the hearing officer erred in determining that claimant's unemployment is a direct result of his impairment. Carrier asserts that the only reason claimant was unemployed is because he did not make adequate efforts to find work. The hearing officer considered the evidence regarding the reasons for claimant's unemployment and made a direct result determination in claimant's favor. The hearing officer's direct result determination is sufficiently supported by evidence that claimant sustained a serious injury with lasting effects and that, during the filing period, he could not reasonably perform

the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 93559, decided August 20, 1993; Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge