

APPEAL NO. 990674

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 March 2, 1999.

The issue before the hearing officer was whether the respondent (claimant) was entitled to supplemental income benefits (SIBS) for her seventh compensable quarter of eligibility.

The claimant was found by the hearing officer to be unemployed during the disputed period as a direct result of her impairment. The hearing officer also found that the claimant made a good faith search for employment commensurate with her ability to work.

The appellant (carrier) appeals, making essentially a numerical argument that a search involving 24 days by definition did not "adequately span" the filing period as a good faith search is required to do. The carrier also disputes that the claimant cooperated with the Texas Rehabilitation Commission (TRC) as she stated she had. The carrier asserts that finding entitlement runs against the great weight and preponderance of the evidence. The claimant responds that the decision is supported by the evidence.

DECISION

Affirmed.

The claimant injured herself in a fall on _____, while employed by (employer). She had two surgeries on her knee as a result, and testified at the CCH that another surgery was pending as per her treating doctor, Dr. G. She had worked briefly for the employer again once she was released to part-time work (four hours a day) but said she quit when she was unable to continue the work. It appears that Dr. G released her to light duty effective July 13, 1998, and the claimant indicated she worked for the employer for two weeks but was unable to physically do the work. Her first day of employment had been the last day of the preceding SIBS quarter. A letter from the employer said she worked from June 22 through July 2, 1998. The current filing period under scrutiny ran from around September 22 through December 22, 1998. There was no dispute that her limitations from Dr. G were to work no more than four hours a day, with limitations on walking to one hour per day (and there is a certificate from him to this effect in evidence). She was restricted to 15 pounds maximum lifting.

The claimant said that Dr. G took her entirely off work on December 21, 1998, but said there was no medical report to this effect. However, the evidence included such a certificate dated January 7, 1999.

The claimant asserted that she contacted 30 employers, some by telephone, most through personal contact. The search was made on approximately 24 days. However, one of those days involved a job fair during which seven employers were contacted. The TRC

had referred her to the job fair, which was directed at prospective employees with disabilities.

The claimant's Statement of Employment Status (TWCC-52) showed that she earned \$60.00 a week for the first three weeks, which she stated was for some after-school care for a friend whose regular babysitter was unavailable. From the dates listed, it appears that her search for employment ran throughout the quarter, with the last contact listed on December 7, 1998, at which point the TWCC-52 was forwarded to the carrier, where it was date-stamped on December 9, 1998. There was conflicting evidence presented by the carrier, from contacts with listed employers and through a private investigator who contacted 12 of the 30 employers, disputing whether claimant actually placed the applications as she stated.

An injured employee is required to make a good faith search for employment commensurate with the ability to work in order to continue to qualify for SIBS. Section 408.143(a)(3). We have held that the good faith effort necessary for SIBS is to obtain employment commensurate with the ability to work, not to obtain employment at a certain wage scale. Texas Workers' Compensation Commission Appeal No. 960946, decided July 1, 1996. While the carrier points out that the Appeals Panel has stated that the search requirement spans the entire period, the Appeals Panel has not prescribed that this translates to a set number of contacts per week. In fact, the new SIBS rules which will be effective in future quarters for the claimant do not set such a limitation, although some search every week of the qualifying period is prescribed. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)). For the period in issue here, prior to the effective date of these rules, the hearing officer could consider the number of contacts made in light of the fact that claimant was limited to working four hours a day. The decision is supported by the evidence and not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge