APPEAL NO. 990735

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On March 15, 1999, a hearing was held. The hearing officer determined that respondent (claimant) was entitled to supplemental income benefits (SIBS) for the first compensable quarter. Appellant (carrier) asserts that claimant did not meet the direct result test because he voluntarily left a job during the filing period; in addition, it said he did not look for a job in good faith because he limited his job search and only made a few contacts. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant worked for (employer 1) on _____, when, he said, he injured his back delivering a full oxygen tank to a customer. He had to pull the tank, on a dolly, upstairs to get to the apartment where the delivery was made. The parties stipulated that claimant has a 21% impairment rating, that no benefits have been commuted, and that the first quarter began on January 22, 1999. The hearing officer found that the filing period began on October 24, 1998. Other findings of fact not appealed included that claimant worked at two different jobs during the filing period, and he continued to look for work; that he received two other interviews; and that he earned less than 80% of his average weekly wage (AWW) during the filing period.

A key area of emphasis at the hearing concerned claimant's employment with (employer 2), which began before the beginning of the filing period. Claimant worked for employer 2 until the latter part of November 1998. He testified that he began work there as a temporary but was on a track that would lead to a permanent job. However, he stated that temporary employees were later told that those jobs would be allowed to expire, and people in them would not be hired permanently. He also said that he was told his job would expire about the time that he left that employment. He also testified that while still with employer 2 he began looking for work. His pay record does not indicate that he went directly from employer 2 to (employer 3), where he appears to have begun work the beginning of December. His last pay from employer 3 was received on December 27, 1998, but the record also shows there was no pay for the week ending December 20, 1998. The latter job was also temporary and claimant said that while it began as full time it went to part time. He continued to look for work while working for employer 3. Claimant was under a restriction to lift no more than 10 pounds during the filing period in question when he worked for employer 2 and employer 3.

Claimant's original Statement of Employment Status (TWCC-52) only showed three job contacts. Claimant stated though that he was new to the record-keeping aspect of SIBS and before the hearing he contacted employers he knew he had contacted and was able to reconstruct that employers were contacted during the filing period 16 times, including employer 3. The hearing officer found that claimant's two jobs and his other

searches, including having two other interviews, showed that he attempted in good faith to find work commensurate with his ability. That determination is sufficiently supported by the evidence.

Carrier argues, with some justification, that there was no showing when claimant's job would have ceased or when claimant would have been let go had he merely stayed with employer 2. It is true that a definite date when claimant would have been let go was not shown. Claimant's action in leaving that job could be considered ill-advised, but that does not necessarily equate to an absence of a direct result. The facts provided by claimant about the status of his job, if believed–the hearing officer could and did believe claimant–would not necessarily equate claimant's leaving this job to a claimant who refused to accept an offered job within his restrictions. The situation presented in this regard also provided the hearing officer with a question of fact for him to determine. He determined that claimant was underemployed as a direct result of the impairment. While comments from the benefit review conference are not usually cited, that report noted that even had claimant stayed with employer 2 and had employer 2 allowed him to stay throughout the filing period, the claimant would still have been underemployed. Claimant's AWW was found to be $534.11, and that finding was not appealed. The average wage he earned during the weeks he worked for employer 2 was less than $320.00 a week; therefore, if claimant continued to work for employer 2 at the same average wage, underemployment would still have resulted. The determination that claimant's underemployment was a direct result of the impairment is sufficiently supported by the evidence.

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:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge