

APPEAL NO. 990771

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 19, 1999. The issue at the CCH was whether respondent (claimant) was entitled to supplemental income benefits (SIBS) for the ninth compensable quarter. The hearing officer determined that claimant is entitled to SIBS, from which determination appellant (carrier) appeals on sufficiency grounds. The direct result determination in claimant's favor was not appealed. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant is entitled to SIBS. Carrier asserts that claimant did not provide sufficient evidence to show that he made a good faith job search.

The parties stipulated that: (1) claimant sustained a compensable injury on _____; (2) claimant had an impairment rating of 16%; and (3) claimant did not commute any of his impairment income benefits. The hearing officer determined that the filing period for the ninth quarter was from September 30, 1998, to December 28, 1998.

Claimant testified that he sustained a compensable back injury on _____, when he lifted a machine and his leg gave way. He said he underwent surgery for two herniated discs in 1997 and said he sees Dr. A on a monthly basis. Claimant said he has been taking Soma and Relafen daily and that he uses a cane to walk. Claimant agreed that he had been released to return to light-duty work sometime around November 12 or November 19, 1998. He said that after he was released to return to work, he began looking for work "immediately." Claimant said he looked for work in the construction field because he thought he might obtain some light-duty cleaning work.

In a September 21, 1998, report written shortly before the filing period began, Dr. A stated that claimant walks with an antalgic gait, that he has limitations on his range of motion, that motor strength testing shows some give way weakness, and that claimant "is to remain off work." In a November 12, 1998, report, Dr. A said he met with claimant's case manager and that claimant should be able to return to work within a sedentary level of activity. However, it does not indicate that claimant attended that meeting. A report from Dr. A dated November 23, 1998, states that Dr. A met with claimant and that claimant was to continue with a sedentary level of work "as per his [functional capacity evaluation (FCE)] of January 1998."

The hearing officer determined that: (1) claimant had some ability to work during the filing period in question; (2) claimant looked for work with 10 potential employers in areas "where he thought he could perform light-duty work"; (3) during the filing period, claimant had

restrictions regarding his kneeling, lifting, and standing; (4) claimant was not released to light-duty work until late November 1998; and (5) claimant made a good faith job search.

The applicable law regarding SIBS and our appellate standard of review are set forth in Sections 408.142(a) and 408.143; Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 951487, decided October 19, 1995; Section 410.165(a); and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer was the sole judge of the credibility of the medical evidence and determined that claimant had some ability to work from the medical evidence before him. The hearing officer made his determinations regarding good faith and ability to work based on the evidence before him and he determined what weight to give to claimant's testimony regarding his job search. We have reviewed the evidence and we conclude that the hearing officer's determinations regarding good faith are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We would further note that any evidence regarding when claimant was given a work release was for the hearing officer to consider in making his determinations in this case. The hearing officer could have found from the evidence that Dr. A did not communicate to claimant that he may work light duty until November 23, 1998, which would be "late November 1998." Because the hearing officer's good faith determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we will not substitute our judgment for his. Cain, supra.

Carrier contends that claimant was released to work but waited a week to begin looking for work. However, the hearing officer could find from the evidence that claimant was not released to return to light duty until November 23, 1998, and that he acted in good faith by beginning a job search immediately. Carrier complains that there was nothing to show that claimant's doctor had him off work before November 1998. However, the hearing officer could find from Dr. A's September 1998 report that claimant had been off work due to his injury. Carrier contends that claimant was capable of performing light-duty work since the date of his January 1998 FCE. However, Dr. A indicated that claimant was still off work in September 1998 and that he was not released to return to work until November 1998.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge