

APPEAL NO. 990795

Following a contested case hearing held on March 30, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 18th compensable quarter. Claimant's appeal states simply that this determination is contrary to the great weight of the evidence. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, claimant suffered a compensable injury in the course and scope of his employment; that he reached maximum medical improvement on October 29, 1993, with an impairment rating (IR) of 16%, and has not commuted any impairment income benefits (IIBS); and that the 18th compensable quarter began on December 28, 1998, and ended on March 28, 1999.

Claimant testified that during the filing period (September 28 to December 27, 1998), he saw his current treating doctor, Dr. A, and took medications, and that he had back pain and pain and numbness in his right leg. He testified that he sustained his back injury while lifting and that the only work he has ever done is carpentry work. He also said he is restricted from lifting more than 15 to 20 pounds; that he can only walk for one to two blocks; and that his right leg cramps and becomes numb. Dr. A's Specific and Subsequent Medical Report (TWCC-64) dated November 23, 1998, states that the diagnosis is lumbosacral sprain/strain and lumbar discogenic syndrome, that claimant has been unable to follow up due to transportation problems, and that he "remains off work" and will continue with medication and exercise.

Concerning his job search during the filing period, claimant, who said he lives in Chaparral, State, a 20-minute drive from El Paso, stated that he obtained the names of the businesses listed in his Statement of Employment Status (TWCC-52) from the newspapers, from talking to friends, and from just going to some of the places. He said that during the filing period he looked for work "all the time" by looking at the newspaper, by talking to friends about openings, and also by going places and meeting people but that he cannot do much traveling because of his back and leg pain. Attached to claimant's TWCC-52 are pages containing the handwritten names of 35 businesses, various dates, ostensibly the dates of claimant's contacts, and, in some instances, the names of persons contacted. The dates start on October 12, 1998, and end on December 30, 1998, and reflect 10 contacts in October, 12 contacts in November, and 13 contacts in December. Claimant was unable to identify which businesses he found in the newspaper, which were suggested by friends, and which were places he simply drove by and inquired. He also indicated that, since he lives in State, he did not register with the Texas Workforce Commission. Claimant also

indicated he thought he had completed only one application and that he was mostly seeking cleaning positions.

The carrier introduced the report of its disability management company which reflected that, of 34 employers listed by claimant on his TWCC-52, five confirmed that claimant had not applied for employment, 18 were unable to confirm whether claimant had applied, nine were not businesses listed with information services in El Paso, and two did not answer the telephone.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the IIBS period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBS; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. We have noted that good faith is an intangible and abstract quality with no technical meaning or statutory definition. It encompasses, among other things, an honest belief, the absence of malice, and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and inner spirit and, therefore, may not be determined by his protestations alone. Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, citing BLACK'S LAW DICTIONARY (6th ed. 1990). Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

The hearing officer found that claimant's testimony was not persuasive. The hearing officer further found that during the filing period, claimant had some ability to work, that he did not make any efforts to look for work commensurate with his ability, and that he failed to prove that his unemployment was a direct result of his impairment. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer clearly had problems with claimant's credibility, and this became apparent when claimant was unable to provide the hearing officer with various TWCC details about his quest for employment as specified on the list he attached to his TWCC-52.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Alan C. Ernst  
Appeals Judge