APPEAL NO. 990890

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 12, 1999. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the eighth quarter. In his appeal, the claimant essentially argues that the hearing officer's determination that he did not make a good faith effort to look for work commensurate with his ability to work is against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant's unemployment in the filing period was a direct result of his impairment and that determination has, therefore, become final. Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he was assigned an impairment rating of 15% or greater for his compensable injury; that he did not commute his impairment income benefits; that the eighth quarter of SIBS ran from December 25, 1998, to March 25, 1999, with a corresponding filing period of September 25 to December 24, 1998; and that the claimant did not have any earnings during the filing period. The claimant testified that at the time of his injury he was a truck driver. He stated that he was driving an 18-wheeler on _____, when he hit a pothole, causing him to be "ejected" from the air seat. He stated that he hit his head on the roof of the truck and then landed on his buttocks in the seat. The claimant sustained neck and low back injuries as a result of that incident. He has undergone fusion surgery in both his neck and low back. In February 1998, Dr. C, performed surgery to remove the hardware from the claimant's neck.

In a progress report of April 28, 1998, Dr. C noted that the claimant was two months and one week post removal of the hardware and that the claimant "feels markedly improved since undergoing his surgery." The claimant testified that he did not agree that his condition improved significantly following the hardware removal surgery. In the April 28th report, Dr. C also opined that the claimant "should be able to return to some type of gainful employment, possibly sedentary duties." In a June 12, 1998, letter, Dr. C stated that he could not provide specific limitations and work restrictions because the claimant needed to undergo a functional capacity evaluation (FCE). On June 30, 1998, an FCE was performed. The FCE report states:

> During the [FCE], [claimant] demonstrated the ability to lift up to 43 lbs. occasionally, 21 lbs. frequently, 9 lbs. constantly and carry 38 lbs. According to the DOT, this places him at the higher end of the medium level work category; exerting force from 20 lbs. to 50 lbs. on an occasional basis.

The report also provides that the claimant "has no definite vocational plans at this time. He does not think he will be able to return to work as a Truck Driver nor does he believe that he will be able to find any type of work in another industry."

The claimant testified that he sought employment during the relevant filing period. He testified that he looked through the newspaper, that he contacted the Texas Workforce Commission (formerly the Texas Employment Commission), that he completed and filed applications, and that he contacted the employers with whom he had applied to check on the status of his applications. On cross-examination, the claimant stated that he also contacted five of the 18 employers sent to him by the carrier's vocational specialist. He explained that he only contacted the employers where he would be comfortable and where he believed he would be able to do the job. He stated that he applied for several jobs as a truck driver, while acknowledging that he could not perform the duties of a truck driving job where he was required to load and unload the truck. The claimant also acknowledged that on two of the applications he completed at the recommendation of the vocational specialist, he noted that he was not qualified for the position for which he was applying because he could not write legibly. He stated that he nonetheless completed and filed the applications because he believed there might be other jobs at the motel he could do. In response to questioning from the hearing officer, the claimant noted that it was hard to put a time limit on the time he spent each week looking for work in the filing period; however, he estimated that he spent "four to five hours, probably, a day, at least three days a week."

The hearing officer determined that the claimant did not make a good faith effort to look for work in the relevant filing period. That question presented a question of fact for the hearing officer to decide. It was the hearing officer's responsibility, as the sole judge of the evidence under Section 410.165(a), to consider the evidence concerning the claimant's job search efforts in the filing period and to determine if the claimant sustained his burden of proving good faith. In making her good faith determination, the hearing officer was free to consider the number of employment contacts made and the nature of those contacts. Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996. To that end, the hearing officer noted that "[o]f concern was the overall lack of effort." She further noted that the claimant was "self-limiting in the type of work sought and did not give much credence to other potential areas which were within his work abilities." The hearing officer determined that the claimant "appears to have been more concerned with putting down an effort and completing the paperwork then in looking in good faith for employment." After reviewing the testimony and evidence, the hearing officer simply was not persuaded that the claimant had sustained his burden of proving that he made a good faith effort to look for work in the filing period for the eighth quarter. Our review of the record does not reveal that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge