APPEAL NO. 990892

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 March 30, 1999. With respect to the single issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 12th quarter. In her appeal, the claimant essentially argues that the hearing officer's determination that she did not make a good faith effort to look for work commensurate with her 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 her impairment and that determination has, therefore, become final. Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____; that she was assigned an impairment rating of 23% for her compensable injury; that she did not commute her impairment income benefits; and that the 12th quarter of SIBS ran from July 26 to October 24, 1997, with a corresponding filing period of April 26 to July 25, 1997. The claimant testified that at the time of her injury she was the general housekeeping manager for the employer motel and that she injured her low back lifting wet linens out of the trunk of her car.

Dr. M is the claimant's treating doctor. In a "To Whom it May Concern" letter of October 17, 1997, Dr. M stated:

> [Claimant] has not returned to work at this time due to the fact that she had an on-the-job injury and is continuing to be very symptomatic with pain in her back. The patient is required to take pain medications as well as anti-inflammatories and muscle relaxants intermittently. She has additional other problems but are not the reason she has not returned to work.
>
> I do not feel that she can do any manual labor, any sedentary type job. We must limit her to sitting for short periods of time, standing for short periods of time, and she cannot climb stairs, ladders, or scaffolding as a result of her work injury.

In a letter of October 5, 1998, Dr. M stated:

> [Claimant] is limited to the time she can sit to approximately 15 minutes at a time and stand for only about 15 minutes at one time out of each hour. She cannot climb stairs, ladders or scaffolding as a result of her on-the-job injury.

> She is not capable of doing any type of manual labor and would have much difficulty in doing sedentary type jobs as well.

Dr. M's March 18, 1999, "To Whom it May Concern" letter provides that the claimant "is unable to return to work at this time. Her back injury is so severe that she is not going to be able to go back to work and she will be placed on permanent disability."

In a report of September 9, 1997, Dr. B, who examined the claimant at the request of the carrier to provide an opinion on the claimant's ability to work, stated:

> In terms of her work related injury and the degenerative lumbar complex, the patient would be limited within the DOT category of SEDENTARY. I feel she would be capable of traveling to and from work, being at work and performing appropriate tasks and duties. The patient should refrain from any repetitive lifting, bending, stooping, squatting, or being maintained in any posteriorly encumbered positions. (Emphasis in original.)

The claimant testified that although Dr. M had advised her not to work, she sought employment in the filing period for the 12th quarter. She testified that she applied with seven employers over three days in July 1997. She stated that she also went to the Texas Employment Commission, but she could not specify times or dates of her visits. She testified that she did not contact the Texas Rehabilitation Commission in the filing period, that she did not participate in a retraining program, and that she did not contact a temporary agency or a placement agency. The claimant also testified that during the filing period she had primary responsibility for the care of her five-and seven-year-old grandchildren and that she and her husband shared responsibility for 30 chickens, 12 rabbits, 50 goats, two baby calves, and a 20' x 20' garden. On direct examination the claimant stated that she believes she could have performed the jobs for which she applied in the filing period; however, in response to questioning from the hearing officer, the claimant stated that she "couldn't have held down a job and made a decent hand."

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. 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 her burden of proving good faith. In making his good faith determination, the hearing officer was free to consider the number of employment contacts made and the nature of those contacts. To that end, the hearing officer noted that the claimant only made a limited number of searches over a small portion of the filing period. The hearing officer was free to consider the nature of the claimant's search and to resolve the conflicts and inconsistencies in the evidence against the claimant. After reviewing the testimony and evidence, the hearing officer simply was not persuaded that the claimant had sustained her burden of proof. Our review of the record does not reveal that the hearing officer's determination that the claimant did not make a good faith effort to seek employment in the filing period for the 12th quarter 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).

In her appeal, the claimant also asserts that before she asked for a hearing she was "informed by my ombudsman and the head officer of the [field] office that the hearing officer would rule against me no matter what and I'd be wasting my time." The record does not support the claimant's allegation of bias on the part of the hearing officer. While he was not persuaded by the claimant's evidence that she had made a good faith search for employment, there is no indication that he prejudged the evidence or that he did not objectively evaluate it. We perceive no error. The claimant's assertions that the 1989 Act is "poorly written" and that the employees of the Texas Workers' Compensation Commission "aren't there to help the working man" are matters outside our jurisdiction.

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Alan C. Ernst
Appeals Judge