

APPEAL NO. 990912

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 1, 1999, a hearing was held. He determined that the appellant (claimant) did not make a good faith effort to find work during the filing periods for the 17th, 18th, and 19th quarters and was entitled to no supplemental income benefits (SIBS). Claimant asserts that findings of fact indicating that he is not entitled to SIBS are in error, stating that he "proved beyond the preponderance of the medical evidence that he made a good faith effort . . . ." Respondent (self-insured) replied that the decision should be affirmed.

DECISION

We affirm.

While claimant states that he proved he made a good faith effort beyond "the preponderance of the medical evidence," such evidence was not material to this decision. Claimant stated that he has had a functional capacity evaluation that showed he could work with a 20-pound lifting limit. He did not assert that he was unable to work, admitting that he could do light work, but testified that his efforts in each filing period to contact employers showed a good faith attempt to find work commensurate with his ability.

The hearing officer heard claimant's testimony plus that of Ms. C, claims adjuster, and Ms. N, a vocational rehabilitation worker. Ms. C testified that claimant checked certain job leads only after the passage of several weeks so that some jobs were taken by then. She also pointed out that some job contacts claimant listed were from 1997, while the three filing periods in dispute at this hearing began in late March 1998 and ended in late December 1998. Claimant testified in rebuttal that the 1997 job contacts listed were a mistake. Ms. C also stated that some of the contacts claimant listed that were not from 1997 were still not in the quarter set forth. Ms. N testified that she provided job leads to places that will take disabled workers.

Claimant's Statement of Employment Status (TWCC-52) forms for the three quarters did not list the jobs he contacted. Separate sheets were provided with job contacts on them. Many of these were sheets that were from "Genex" and several sheets that were not from self-insured dealt with events in 1997. The hearing officer did not make any findings of fact as to the number of job contacts claimant made in any filing period and his Statement of Evidence only lists job contacts that were not made in the filing period for the 17th quarter and the 19th quarter. Given the nature of the appeal in this case, which does not state that the hearing officer erred in not finding a certain number of contacts made in any quarter, we do not believe it necessary to remand to show the number of contacts actually made in any of the filing periods involved. We also note that the hearing officer found the claimant's testimony to be "inconsistent and non-persuasive."

The determination of whether a claimant acted in good faith in seeking work is a factual determination for the hearing officer to make. Absent any incorrect application of the law, his determination as to good faith, and his determination as to whether unemployment is a direct result of the impairment, will only be overturned if against the great weight and preponderance of the evidence; his determination in regard to the absence of good faith is not against the great weight of the evidence; therefore, the determinations that claimant is not entitled to SIBS for the 17th, 18th, and 19th quarters are sufficiently supported by the evidence and findings of fact.

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).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Alan C. Ernst  
Appeals Judge