

APPEAL NO. 990913

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 April 14, 1999. The issues at the CCH were whether the appellant (claimant) was entitled to supplemental income benefits (SIBS) for the fifth and the sixth compensable quarters. The hearing officer determined that the claimant was not entitled to SIBS for either quarter and the claimant has appealed, stating that the great weight of the evidence is to the contrary of the hearing officer's decision. The respondent (carrier) urges that there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer and asks for affirmance.

DECISION

Affirmed.

The claimant sustained a low back injury in _____, reached maximum medical improvement on October 8, 1996, and was assessed a 17% impairment rating. He has not returned to work and is seeking SIBS for the fifth and sixth compensable quarters, which ran from September 30, 1998, through March 30, 1999. During the 90-day filing period preceding each quarter, the claimant stated he looked for employment and submitted handwritten notes indicating some 65 job contacts during the filing period for the fifth quarter and some 64 job contacts during the filing period for the sixth quarter, all basically in the same limited geographical area. These job contacts took place during a 30-day period of the 90-day filing period for the fifth quarter and during a 23-day period for the sixth quarter. The evidence indicated that most of the contacts were "cold calls," although the claimant indicated that he contacted references to him from a vocational service employed by the carrier. He denied that he received any job listing during the filing period for the fifth quarter, although a carrier's exhibit showed such correspondence. Although the claimant indicated he was still experiencing pain, he did not seek medical care or treatment during the periods in issue. He was not in contact with either the Texas Workforce Commission or the Texas Rehabilitation Commission during the periods in issue. The claimant acknowledged that he did not look for work during certain periods because he had to take and pick up the children from school. He also acknowledged that he occasionally gambled at a local casino, rested at home, and visited relatives.

The carrier introduced a video which showed the claimant driving around and going to several locations. One of the places was a gambling casino where he stated he goes "sometimes." He stated that on the day the video was taken, his purpose for going to the casino was he was feeling sad and desperate and that he was just there. He acknowledged that he gambled a little. He stated that he would also go there because sometimes they have a lot of openings. The carrier also introduced into evidence the report of a required medical examination of July 28, 1998, wherein the doctor reports that x-rays of the lumbar spine and ankle were negative, that the examination was normal, and that "physically I can find no reason to restrict him from returning back to the work place

based on the findings of the examination." Also in evidence were extensive records from the vocational service used by the carrier which generally indicate a lack of cooperation in contacting job prospects, and the lack of verification for job contacts asserted by the claimant.

The hearing officer found that the claimant's unemployment was not a direct result of his impairment and that he did not make a good faith effort to obtain employment commensurate with his ability to work, and concluded that he was not entitled to SIBS for either quarter. While the claimant listed and testified that he made a number of job contacts during the filing periods, there was contrary evidence in the reports of the vocational service negating his testimony and casting doubt on a good faith job search having been made. Too, the claimant acknowledged that his job searching was limited to a small area and that he was occupied with other activities during much of the filing periods in issue, including taking his children to and from school, going to a gambling casino on occasion, resting at home, and going to visit relatives. The medical evidence, together with the video, could also have been seen as giving rise to an inference that the claimant could essentially return to the same level of labor as at the time of the injury.

Regarding good faith and the requirements for seeking employment commensurate with the ability to work, the Appeals Panel has repeatedly stated that a significant factor is the pattern of any search, and that timing, forethought, and diligence should be considered in assessing whether a good faith effort has been shown. Texas Workers' Compensation Commission Appeal No. 982987, decided February 4, 1999; Texas Workers' Compensation Commission Appeal No. 982210, decided November 4, 1998. Here, although the claimant asserts he made a considerable number of contacts, many of which could not be verified by the vocational service, his pattern was, at best, irregular. The hearing officer was free to discount the claimant's testimony in showing good faith (Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621(Tex. Civ. App.-Amarillo 1980, no writ)), particularly given the other evidence including claimant's acknowledgment about his other activities during the periods. The medical report from the required medical examination, the lack of any treatment or doctor visits during the periods in issue, and the claimant's other activities during much of the time during the periods provided evidentiary support for the hearing officer's concluding and deciding that the unemployment was not a direct result of the claimant's impairment. We are unwilling to conclude, under the circumstances of this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Accordingly, the decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge