

APPEAL NO. 990951

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 22, 1999, with the record closing on April 13, 1999. Hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 14th quarter. The claimant appeals this determination, contending that it is not supported by the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____. He reached maximum medical improvement on April 29, 1994, and was assigned a 24% impairment rating. Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBS after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)), the quarterly entitlement to SIBS is determined prospectively and depends on whether the employee meets the criteria during the prior quarter or "filing period." Under Rule 130.101, "filing period" is defined as "[a] period of at least 90 days during which the employee's actual and offered wages, if any, are reviewed to determine entitlement to, and amount of, [SIBS]." The 14th SIBS quarter was from December 12, 1998, to March 12, 1999. The filing period for this quarter was from September 12 to December 11, 1998. At issue in this case is whether the claimant made the required good faith job search effort.

The claimant testified to chronic hip pain, dizziness which causes vomiting, shoulder and back pain and that his left leg goes to sleep. He has done manual labor all his life, has a limited education, and does not speak English. He submitted a Statement of Employment Status (TWCC-52) and supplemental report on which he listed 30 job contacts, six of which were not in the filing period. He said that he concentrated his job search in a limited area of town where he thought he could get transportation and where his inability to speak English would not be a problem. Most of the places of business were not hiring and it was not clear what type of job he sought. Also in evidence was a functional capacity evaluation of February 16, 1998, which placed him in a sedentary work category, but noted very poor cardiac capacity. The claimant has apparently not worked since his date of injury. There was also evidence that the claimant did not follow up on five potential job leads furnished by the carrier.

The Appeals Panel has generally defined good faith as a subjective notion characterized by honesty of purpose and being faithful to one's obligations. Texas Workers' Compensation Commission Appeal No. 941293, decided November 8, 1994.

Whether the required good faith job search has been established is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. The hearing officer, as fact finder, is the sole judge of the weight and credibility of the evidence. Section 410.165(a). He concluded that the claimant did not establish the necessary good faith job search. In his appeal, the claimant argues that the hearing officer discounted his very real physical limitations as well as his limited work skills and experience only doing medium to hard manual labor. He argued that under these circumstances it would be pointless to require him to do more than he has done. As noted above, whether the required good faith job search has been made is a question of fact. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and 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). Under this standard of review, it is insufficient to obtain a reversal even if, as the claimant suggests, there was sufficient evidence to support a contrary decision or another hearing officer may have found otherwise. Having reviewed the record, we find the evidence sufficient to support the determination of the hearing officer on the good faith job search question and affirm his determination that the claimant was not entitled to 14th quarter SIBS.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge