

APPEAL NO. 991000

This appeal is brought 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 7, 1999. The appellant (claimant) and the respondent (carrier) stipulated that on _____, the claimant sustained a compensable injury to his right shoulder; that his impairment rating is 15%; that the filing period for the 16th quarter for supplemental income benefits (SIBS) began on June 10, 1998, and ended on September 7, 1998; and that the filing period for the 17th quarter for SIBS began on September 8, 1998, and ended on December 7, 1998. The hearing officer determined that during the filing periods for the 16th and 17th quarters for SIBS the claimant's unemployment was a direct result of his impairment from the compensable injury. Those determinations have not been appealed and have become final under the provisions of Section 410.169. The hearing officer also determined that during those filing periods the claimant did not in good faith seek employment commensurate with his ability to work and that he is not entitled to SIBS for the 16th and 17th quarters. The claimant appealed, stated that the evidence established that he in good faith sought employment commensurate with his ability to work, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The carrier responded, stated that it agreed with the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified that he does not speak or read English, that he attended school for one year, that he injured his shoulder when a barrel fell on it, that he has had surgery on his shoulder twice, and that his treating doctor is trying to get additional surgery approved. A Statement of Employment Status (TWCC-52) for the 16th quarter indicates that he sought employment with 22 employers and a TWCC-52 for the 17th quarter indicates that he sought employment with 24 employers. Most of the jobs he sought involved cleaning. He said that he just went to some places, that he learned about some of the places from friends, and that some of the places had advertisements in the newspaper. The claimant stated that he looked for work twice a week; that he spent about three or four hours a day looking for work; that he told the people that he was injured; that he completed some applications, but he did not remember how many; that he was told that he needed proof that he looked for work; that he had four or five cards from places where he sought work; and that he was not offered a job and did not work during the filing periods. The claimant had admitted into evidence two statements showing that he had sought employment with two employers. The carrier had admitted into evidence a copy of the two TWCC-52s with notations that most of the employers listed had no record of the claimant having applied for a job.

Whether good faith was shown is usually a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995.

Consideration can be given to the manner in which a job search is made and timing, forethought, and diligence may be considered in determining whether a good faith job search was made. Texas Workers' Compensation Commission Appeal No. 961195, decided August 5, 1996. In Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, the Appeals Panel rejected the contention that a certain number of job applications showed good faith and stated the following about good faith:

In common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation.

And in Texas Workers' Compensation Commission Appeal No. 960252, decided March 20, 1996, the Appeals Panel stated that the trier of fact, in determining whether the claimant in good faith sought employment commensurate with the ability to work, sometimes assesses whether undeniable contacts made with prospective employers constitute a true search to reenter employment or are done instead in a spirit of meeting, on paper, eligibility requirements for SIBS.

The burden is on the claimant to prove by a preponderance of the evidence that he is entitled to SIBS. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determinations that during the filing periods in question the claimant did not in good faith seek employment commensurate with his ability to work and is not entitled to SIBS for the 16th and 17th quarters are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge