

APPEAL NO. 991011

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 April 22, 1999. She (hearing officer) determined that the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the 17th quarter. The appellant (carrier) appeals this determination, contending it is contrary to the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____. She reached maximum medical improvement on February 15, 1994, and was assigned a 16% 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 17th quarter was from February 26 to May 27, 1999, and the filing period for this quarter was the preceding 90 days.

The claimant testified that she does not speak English, does not have a G.E.D., does not drive, and has lived for the last 25 years in a small town some 30 miles from (City). She submitted a Statement of Employment Status (TWCC-52) in which she listed some 45 job contacts. She said she found some in the telephone book and some were identified to her by the carrier. She said she had numerous interviews and submitted approximately five applications. The interviews appeared to be conversations with someone at the job location and not what would otherwise be a structured interview. She said she looked for work primarily in the area where she lived because she does not drive. She also testified that some of the employers required a G.E.D. and English language skills. Apparently one employer called her back, but she did not respond for reasons not made clear. She replied to the carrier's questioning that over the years during which she has received SIBS, she has not made attempts to complete her G.E.D., to obtain a driver's license, to learn even rudimentary English, or to otherwise develop any labor skills. The carrier also noted that, despite discussions about this in the past, she never put dates on her list of employer contacts and could not remember exactly when she made the contacts. A carrier investigation largely failed to confirm the contacts that she claimed.

The hearing officer considered this evidence and concluded that the claimant made the required good faith job search and established that her unemployment during the filing period was a direct result of her impairment. These were factual determinations for the hearing officer. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995, and Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. We have noted in the past that in arriving at a good faith determination, a hearing officer can consider the educational level and skill level of the injured worker. Texas Workers' Compensation Commission Appeal No. 982222, decided October 22, 1998. The evidence needed to establish a good faith job search for a highly trained worker is not necessarily the same for the marginally skilled. In its appeal, the carrier argues that the claimant was simply going through the motions of a job search and that she should have increased or improved her efforts from experience gained in her job searches over prior quarters. It also argues that the lack of vocational training efforts suggests a lack of good faith and that her failure to precisely date her job contacts hindered the carrier's ability to determine how much time the claimant spent in her job search activities throughout the filing period. We note that the hearing officer could infer from the TWCC-52 and testimony of the claimant that the contacts were made in the filing period, if not the precise date of the filing period. The matters raised by the carrier were clearly appropriate for the hearing officer to consider, though none were necessarily determinative of the issue of good faith. 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). Although another hearing officer may well have found otherwise, this hearing officer determined that the claimant made the required good faith job search. Under our standard of review, we affirm that determination.

We also affirm the finding of direct result on the basis of evidence of a serious injury with lasting effects and a seeming inability to return to the previous job. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. The claimant need only establish that her unemployment was a direct result of her impairment, not that the impairment was the only cause of the unemployment. Texas Workers' Compensation Commission Appeal No. 961981, decided November 18, 1996. Thus, even if her lack of a driver's license or English skills played a role in her unemployment, this does not preclude a finding of direct result in her favor.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge