

APPEAL NO. 991029

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 5, 1999. She determined that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the first three compensable quarters. Appellant (carrier) appeals, challenging the direct result and good faith determinations. Claimant responds that the Appeals Panel should affirm the hearing officer's determinations.

DECISION

We affirm.

Carrier first contends that the hearing officer failed to consider each quarter separately when determining entitlement to SIBS for the first three quarters. Although the hearing officer made a single good faith determination and a single direct result determination regarding the first three quarters, the record does not reflect that she did not consider the evidence regarding each quarter separately. We agree that each application for SIBS must be considered on its own merit. However, we perceive no error.

Carrier contends the hearing officer erred in determining that claimant was entitled to SIBS for the first compensable quarter. Carrier contends that, in the five weeks after claimant found her part-time job with (college), she made only one job contact before the first quarter filing period expired. Carrier contends that claimant did not make a good faith effort to seek full-time employment during the filing period for the second quarter, that she contacted only four employers, and that she applied for work with elementary schools even though she could not do that kind of work anymore. Carrier contends that claimant did not make a good faith effort to seek full-time employment during the filing period for the third quarter because she made only seven job contacts and that all were with only two employers. Carrier complains that claimant spent minimal time looking for work, sometimes merely placing a telephone call or sending a resume.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the impairment income benefits (IIBS) period expires if the employee has: (1) an impairment rating (IR) of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly wage (AWW) as a direct result of the impairment; (3) not elected to commute a portion of the IIBS; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. Although the claimant's good faith effort must, generally, span the filing period, the Appeals Panel has stated that a claimant's job search does not have to encompass a certain length of time. Texas Workers' Compensation Commission Appeal No. 961454, decided September 11, 1996; Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. There is no requirement that a claimant look for work every day of the filing period. Texas Workers' Compensation Commission Appeal No. 960818, decided June 3, 1996. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that during the filing period for the first quarter, she was hired by college to be a part-time instructor. She said her job began June 1, 1998, and that she started out teaching one class and working about 10 hours per week. Claimant said that after that summer session, she taught three classes in the fall semester, working about 20 to 25 hours per week. The fall semester began in August 1998, which would have been during the filing period for the second quarter. In interrogatory answers, claimant indicated that during the first quarter filing period, which was from April 11, 1998, to July 10, 1998, she applied for 19 jobs. Some of the jobs were with the same employer. Five job contacts were in April, 11 were in May, and three were in June. Only one of the June applications took place after claimant was hired by college on June 1, 1998. The other two June applications were made on the date that claimant was hired and began working.

Claimant testified that she was still working part time for college during the filing period for the second quarter, which was from approximately July 10, 1998, to October 8, 1998. In interrogatory answers, claimant indicated that she applied for 13 jobs during this filing period. Seven of the 13 applications were made on August 21, 1998. Claimant said she did apply for some jobs with elementary schools because she needed to work to pay her bills. Claimant said she would not be able to do the same kind of elementary school classroom work that she did before her injury because she cannot do the stooping, bending, and other activity required. It was not clear from her testimony whether claimant believed she would be able to do tutoring work, which she had also done for elementary schools.

Claimant indicated in interrogatory answers that she made seven job contacts during the filing period for the third quarter. Claimant testified that she followed up on her applications and that she continued to seek full-time employment with college. Claimant also stated that she contacted the Texas Rehabilitation Commission for retraining, but that she was denied services.

A May 1998 functional capacity evaluation report states that claimant sustained her compensable injury in a slip-and-fall accident at work. That report states that claimant is capable of working at a light to sedentary job with restrictions on her lifting ability.

The parties stipulated that: (1) claimant sustained a compensable injury on \_\_\_\_\_; (2) claimant's IR was 17%; (3) claimant did not elect to commute her IIBS; and (4) claimant's earnings during the three filing periods in question were less than 80% of her AWW.

The hearing officer heard claimant's testimony and reviewed the evidence about claimant's employment and her job search efforts. Our review of the record does not indicate

that the hearing officer's good faith determination regarding the first three compensable quarters is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Therefore, there is no basis for disturbing her decision on appeal. The fact that another hearing officer might have reached a different result based on the same facts does not require the Appeals Panel to reverse.

Carrier cites Texas Workers' Compensation Commission Appeal No. 981684, decided September 8, 1998, for the proposition that claimant is not entitled to SIBS because she worked part time and made only minimal job contacts for a full-time job. In that case, however, the claimant said she could work only 20 hours per week, but there were no work restrictions on her hours. The hearing officer determined that the claimant in that case was not required to seek any jobs in addition to the part-time work being performed. The Appeals Panel reversed the determination that that claimant was entitled to SIBS, noting that the hearing officer's determinations were not supported by the evidence. In the case before us, claimant did not disagree that she could work full time. The hearing officer determined that claimant sought full-time work in addition to working her part-time job. Appeal No. 981684 is distinguishable for that reason.

The hearing officer's direct result determination regarding the first three quarters is also sufficiently supported by evidence that claimant sustained a serious injury with lasting effects and that, during the filing periods, she could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 93559, decided August 20, 1993; Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996. The evidence that claimant continues to have work restrictions also supports the hearing officer's direct result determination. Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge