

APPEAL NO. 991034

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 29, 1999. He (hearing officer) determined that the appellant (claimant) was not entitled to 11th quarter supplemental income benefits (SIBS). The claimant appeals this determination, expressing her disagreement with it. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable back injury on _____. She reached maximum medical improvement on February 10, 1995, 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 11th SIBS quarter was from December 27, 1998, to March 27, 1999, and the filing period for this quarter was from September 27 to December 26, 1998.

The claimant submitted a Statement of Employment Status (TWCC-52) in which she listed approximately 38 job contacts. She said she found the contacts in the newspapers, through friends, and just going to the places of employment. She is 66 years old and has limited job and English language skills. She does not drive. She said she would rely on friends and relatives or public transportation to conduct her job search. The most recent functional capacity evaluations place her in a light employment category. She said she cannot walk or sit "for a long time," and cannot bend or pick up "heavy things." She described her low back and left leg pain as constant. She said she never spoke with anyone at the job contacts, but apparently obtained the applications, had someone fill them out for her, and then she turned them in. She also testified that she did not know if she was applying for full or part-time work or what precise job she was applying for. Most of the employers listed had no job openings or were not hiring. The carrier was able to verify only one application.

The hearing officer considered this evidence and concluded that the claimant did not make the required good faith job search and did not establish that her unemployment during the filing period was a direct result of her impairment. These were factual

determinations for the hearing officer to make. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. In his discussion of the evidence, the hearing officer commented that the claimant limited the number of days she looked for work and had little recollection of where she applied for work. He also noted that she testified that others filled out the applications "and she did not know what they were writing down." The claimant appeals the decision of the hearing officer with the statement that the claimant said she looked in the newspapers for jobs and her son and husband took her to look for work. While this may accurately reflect the evidence, it does not compel a finding of a good faith job search. 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). Applying this standard of review to the record of this case, we find the evidence sufficient to support the determination that the claimant did not make the required good faith job search. Having affirmed this determination, we also affirm the determination that the claimant did not prove that her unemployment was a direct result of her impairment.

For the foregoing reasons, we affirm the decision and order of the hearing officer that the claimant was not entitled to 11th quarter SIBS.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge