APPEAL NO. 991043

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 20, 1999. The appellant (claimant) and the respondent (carrier) stipulated that the filing period for the second quarter for supplemental income benefits (SIBS) began on September 24, 1998, and ended on December 22, 1998. The hearing officer determined that during the filing period the claimant had an ability to work; that during a one-week period in December 1998, the claimant sought employment with four potential employers; that Dr. G referred the claimant to the Texas Rehabilitation Commission (TRC) and that the claimant has not cooperated with the TRC; that during the filing period the claimant did not in good faith seek employment commensurate with his ability to work; that during the filing period the claimant's unemployment was a direct result of the impairment from the compensable injury; and that the claimant is not entitled to SIBS for the second quarter. The claimant appealed the determinations adverse to him, contending that the evidence is not sufficient to support those determinations of the hearing officer and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The carrier responded, urging that the evidence is sufficient to support the decision of the hearing officer and that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a detailed statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant has a 24% impairment rating for loss of sight in the left eye as the result of an accident using a weedeater. He testified that during the filing period he also had pain in the left side of his face, that he could not work because of the pain, that he has not been released to return to work, that his attorney advised him to look for work, and that on three days in December 1998 he sought employment with four prospective employers. The claimant stated that he had a prosthetic eye inserted, but did not provide the date of the insertion. Medical records indicate that that was done, but do not have a date of the insertion.

Records indicate that the claimant has 20/20 vision in his right eye. In a Specific and Subsequent Medical Report (TWCC-64) dated January 12, 1998, Dr. EG stated that the claimant demonstrated a lot of anxiety and depression, that the loss of sight requires supportive therapy, that the claimant should undergo a mental health evaluation, and that he was unable to return to work. In a TWCC-64 dated June 22, 1998, Dr. EG said that the claimant had pain, was prescribed pain medication, and was going to change treating doctors. The claimant's current treating doctor, Dr. D, a chiropractor, issued an Initial Medical Report (TWCC-61) dated July 16, 1998, stating that a general medical consultation for pain control and psychiatric intervention for severe depression were recommended and that the claimant was unable to return to work. Dr. D issued disability certificates dated in

July, August, and December 1998, in which he stated that the claimant was to remain in an off-work status until further notice. In a TWCC-64 dated December 2, 1998, Dr. D stated that the claimant was to see Dr. S about a possible eye prosthesis; that he needed a mental health evaluation to address depression; that he was not employable; and that pain, depression, and the inability to drive all preclude him from returning to work in a safe manner. Dr. JG examined the claimant more than once at the request of the carrier. In a letter dated November 11, 1997, Dr. JG said that from an ophthalmological standpoint the claimant may return to work as of October 27, 1997, if he had not already done so and should be restricted to jobs that do not require binocular vision. Dr. GS, a psychiatrist, examined the claimant at the request of the carrier and in a letter dated December 29, 1997, opined that the claimant needed to do some meaningful work and should be restricted from the use of weedeaters and perhaps even lawn mowers.

In Texas Workers' Compensation Commission Appeal No. 931147, decided February 3, 1994, the Appeals Panel stated that if a claimant established that he or she had no ability to work at all during the filing period in question, then seeking employment in good faith commensurate with this inability to work would be not to seek work at all. In Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994, we emphasized that the burden of establishing no ability to work is firmly on the claimant and in Texas Workers' Compensation Commission Appeal No. 941334, decided November 18, 1994, we noted that an assertion of inability to work must be judged against employment generally, not just the previous job where the injury occurred. In Texas Workers' Compensation Commission Appeal No. 941439, decided December 9, 1994, the Appeals Panel stated that claimant's inability to do any work must be supported by medical evidence. In addition, in Appeal No. 941382, *supra*, we stated that medical evidence should demonstrate that the doctor examined the claimant and that the doctor considered the specific impairment and its impact on employment generally. In Texas Workers' Compensation Commission Appeal No. 962447, decided January 14, 1997, the Appeals Panel cited earlier decisions and stated that the medical evidence should encompass more than conclusory statements and should be buttressed by more detailed information concerning the claimant's physical limitations and restrictions and that "bald statements" of an inability to work are of limited use in assessing whether a claimant can work during the filing period because of a lack of any discussion of the nature of and the reasons for the claimant's inability to work. In Texas Workers' Compensation Commission Appeal No. 961918, decided November 7, 1996, the Appeals Panel stated that its comments about medical evidence being more than conclusionary did not establish a new or different standard of appellate review and that a finding of no ability to work is a factual determination which is subject to reversal only if it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The evidence is sufficient to support the determination that during the filing period for the second quarter the claimant had some ability to work.

Section 408.150 provides that if the Texas Workers' Compensation Commission (Commission) determines that a claimant entitled to SIBS could be materially assisted by vocational rehabilitation or training in returning to employment, the Commission shall refer

the claimant to the TRC and if the claimant refuses the services of TRC or refuses to cooperate with services provided, the claimant loses entitlement to SIBS. Section 409.012 also addresses services provided by the TRC. The record contains a letter sent under the provisions of Section 409.012, but not a letter sent under Section 408.150. The hearing officer did not make a finding concerning the claimant losing entitlement to SIBS for refusing the services of TRC. She did make a finding of fact that a doctor referred the claimant to TRC and that the claimant did not cooperate with TRC. While that fact would not result in the claimant losing entitlement to SIBS, it could be considered in determining whether the claimant in good faith sought employment commensurate with his ability to work.

Whether good faith in seeking employment 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.

As a general rule, the search should be made throughout the filing period. In the case before us, the claimant's search was made on December 7, 8, and 17, 1998. The evidence is sufficient to support the determination that during the filing period the claimant did not in good faith seek employment commensurate with his ability to work.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Elaine M. Chaney
Appeals Judge