

## APPEAL NO. 991097

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 November 13, 1998. The issue was the respondent's (claimant) entitlement to the 15th quarter of supplemental income benefits (SIBS) to which the hearing officer held the claimant was entitled. Because of the apparent failure of the hearing officer to apply the correct legal standard in arriving at his decision, the case was necessarily reversed and remanded for further consideration. Texas Workers' Compensation Commission Appeal No. 982987, decided February 4, 1999. A hearing on remand was not held and in a Decision and Order on Remand dated March 17, 1999, the hearing officer purports, without any rationale, to apply the statutory standard regarding whether the claimant attempted in good faith to seek employment commensurate with her ability to work. The appellant (carrier) appeals, urging that there is insufficient evidence to support the hearing officer's finding that the claimant made good faith efforts to look for work commensurate with her ability to work and conclusion that she was entitled to 15th quarter SIBS. No response has been filed.

### DECISION

Affirmed.

The evidence and our discussion of it is set forth in considerable detail in our decision in Appeal No. 982987, *supra*, and will not be repeated here. Suffice it to say that the pattern of the claimant's attempts to seek employment commensurate with her ability to work over the many previous quarters (which have resulted in mixed results) was of concern to us particularly where the hearing officer apparently neglected to apply the correct legal standard. To qualify for SIBS, one of the specific statutory requirements is to attempt in good faith to obtain or seek employment commensurate with the injured worker's ability to work. Section 408.142(a)(4) and Section 408.143(a)(3). The hearing officer, while varying from the specific statutory language, applied the good faith requirements in his findings and conclusion, the matter of concern leading to the earlier remand. While the pattern of the job searches by the claimant, as set forth in the original decision, appears to have become routine in qualifying for SIBS, and although there does appear to be some degree of incoherency in the resolution of the various prior quarters of SIBS, our remand was predicated upon applying the statutory standard to the 15th quarter. It appears that the hearing officer has now applied that standard and again found the claimant was entitled to 15th quarter SIBS. Although we might well have reached a different result under the evidence presented, this is not a sound basis to substitute our judgment for that of the fact

finder on factual issues. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Section 410.165(a) and Section 410.168(a). Not being able to conclude that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, we cannot hold that the hearing officer committed error as a matter of law. The decision and order are affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge