

## APPEAL NO. 991103

Following a contested case hearing held on April 28, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the sole disputed issue by concluding that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the second compensable quarter, January 16 through April 17, 1999. The appellant (carrier) has appealed for evidentiary insufficiency this conclusion as well as findings that during the second compensable quarter filing period, claimant made a good faith attempt to obtain employment commensurate with his ability to work and that his unemployment was a direct result of his impairment from his compensable injury. The file does not contain a response from claimant.

### DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, claimant sustained a compensable injury to his left eye, which later resulted in a 24% impairment rating (IR), that the Texas Workers' Compensation Commission did not approve claimant's request for SIBS for the first compensable quarter and claimant did not pursue that claim, and that the filing period for the second compensable quarter began on October 17, 1998. In evidence is a Benefit Dispute Agreement (TWCC-24) signed by the parties on July 11, 1997, stating agreement that claimant "sustained no disability from the compensable injury sustained on \_\_\_\_\_"; that claimant reached maximum medical improvement on May 29, 1997; and that claimant's IR is 24%.

Claimant, who indicated that he was a heavy equipment operator for (employer 1) at the time of his injury, testified that he cannot see out of his injured eye and that while he can legally drive and does drive a car, the eye injury has affected his ability to get work in that some prospective employers indicated they wanted his eye or vision checked. A March 26, 1997, letter from Dr. B stated that claimant would have to relearn depth perception. Claimant stated that during the filing period he twice went to the Texas Rehabilitation Commission (TRC) and made follow-up telephone calls but got no response from that agency, got tired of waiting, and in December or January began his own job search, ultimately getting a job through a friend with (employer 2) as a roller operator.

Claimant's Statement of Employment Status (TWCC-52) has attachments reflecting that he registered with the TRC on October 6, 1998, has a limited knowledge of English, has over 20 years experience as a heavy equipment operator, and that during the period from December 31, 1998, through January 13, 1999, he contacted 19 prospective employers seeking employment. Claimant's attachments contained the names, addresses, and phone numbers of the businesses contacted and the dates of his contacts. The carrier introduced a letter from the Corporation dated March 30, 1999, to the carrier's adjuster who

signed the TWCC-52 denying SIBS which stated that the TRC advised that on March 24, 1999, claimant was not registered with that agency.

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 IR of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage 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. We have noted that good faith is an intangible and abstract quality with no technical meaning or statutory definition. It encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and inner spirit and, therefore, may not be determined by his protestations alone. Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, citing BLACK'S LAW DICTIONARY (6th ed. 1990). Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)).

The carrier, citing Texas Workers' Compensation Commission Appeal No. 962562, decided February 3, 1997, contends that the hearing officer's finding on the "good faith" criterion cannot stand since the great weight of the evidence shows that claimant's efforts to obtain employment did not span the entire filing period but was basically a spurt of activity at the end of the filing period. We are satisfied that the hearing officer's finding 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could and obviously did consider claimant's two visits and telephone calls to the TRC in an effort to obtain employment leads through that agency before giving up on that agency and making his own contacts, 19 of them, which ultimately led to his obtaining a job. That another hearing officer may have drawn different inferences from this evidence does not provide us with a basis to disturb the finding.

The carrier also contends that the hearing officer's finding on the "direct result" criterion likewise cannot stand because the evidence shows that claimant was capable of performing his preinjury work as a heavy equipment operator. However, as the hearing officer noted, claimant does have an IR of 24% and claimant testified that he cannot see out of the injured eye and that the injury adversely affected his ability to find work because prospective employers indicated that they wanted his vision checked. Further, there is no evidence of other causes of claimant's employment during the filing period such as general adverse economic conditions, evidence of a new or unrelated injury, voluntary student status, or other apparent circumstances overshadowing the impairment as a direct result.

See Texas Workers' Compensation Commission Appeal No. 962653, decided February 13, 1997.

The decision and order of the hearing officer is affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Robert W. Potts  
Appeals Judge