APPEAL NO. 991130

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 7, 1999. She (hearing officer) determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 11th quarter. The claimant appeals this determination, contending that the evidence establishes entitlement. The appeals file contains no response from the respondent (self-insured).

DECISION

Affirmed.

The claimant sustained a compensable injury on _____, in a slip-and-fall accident. He reached maximum medical improvement on May 22, 1995, and was assigned a 19% 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, [SIBS]." The 11th SIBS quarter was from December 23, 1998, to March 23, 1999, and the filing period was from September 24 to December 22, 1998. The hearing officer found that the claimant's unemployment during the filing period was a direct result of his impairment. At issue in this appeal is whether the evidence was sufficient to support the finding that the claimant did not make a good faith job search commensurate with his ability to work.

The claimant submitted a Statement of Employment Status (TWCC-52) and testified to approximately 20 job contacts during the filing period. He said he found the job contacts through the newspaper, from friends, from the Texas Workforce Commission and from Mr. C, his case manager. He also said that he spent three or four hours per day, three days a week in his job search effort. All his job contacts during the filing period, he said, were listed on his TWCC-52. He said he submitted some job applications, but received no interviews. Mr. C testified and submitted a report of his efforts to verify the claimant's job search. In his opinion, the claimant put down on his job applications "exactly what an employer would not want in an employee." He was able to verify only a limited number of contacts.

The hearing officer determined that the claimant did not establish the required good faith job search. On appeal, the claimant asserts that the "medical evidence and

Claimant's testimony clearly establishes [sic] that . . . he . . . searched for employment commensurate with his ability." The Appeals Panel has generally defined good faith as a subjective notion characterized by honesty of purpose and being faithful to one's obligations. Texas Workers' Compensation Commission Appeal No. 93181, decided April 19, 1993. We note that the only "medical" evidence at the CCH was the claimant's testimony that he could not pick up "heavy things," and that he could not walk, sit, or stand for a "long time." Whether the required good faith job search exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. We have also cautioned that good faith is not established simply by some minimum number of job contacts, but a hearing officer may consider the manner in which the job search is undertaken "with respect to timing, forethought and diligence." Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996. In this case, the hearing officer considered the evidence and concluded that the claimant did not establish 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 no reason to disturb her resolution of the good faith job search issue.

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

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge