

APPEAL NO. 991191

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 28, 1999. She (hearing officer) determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 14th quarter. Claimant appeals this determination on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she was not entitled to SIBS for the 14th compensable quarter. Claimant contends that she was actually working 30 hours per week in her home as a childcare worker, that she could not work more than 30 hours per week, that her part-time employment and the job search she made showed her good faith, and that her underemployment is a direct result of her impairment.

The applicable law regarding SIBS and good faith and our appellate standard of review are set forth in Sections 408.142(a) and 408.143; Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 951487, decided October 19, 1995; Section 410.165(a); and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The parties stipulated that: (1) claimant sustained a compensable low back injury on _____; (2) claimant's impairment rating (IR) was over 15%; and (3) claimant did not elect to commute her impairment income benefits. The filing period for the 14th compensable quarter was from approximately November 7, 1998, to February 5, 1999.

The hearing officer has summarized the claimant's testimony and the evidence and we will not repeat it here. Briefly, claimant testified that she had been treated with lumbar surgery after her compensable back injury and that she was still suffering the effects of her injury. Claimant had been employed as a customer service technician at (employer) when she sustained her compensable injury. Claimant testified that, during the filing period in question, she was working keeping her own child and two other children. Claimant had been working 20 hours per week and then increased her hours to 30 hours per week during the filing period. There was medical evidence dated in November 1998 from claimant's treating doctor, Dr. H, that claimant could work only 20 hours per week with lifting restrictions. Claimant said Dr. H approved the increase in her work hours. Claimant testified that she did not feel she could work more than 30 hours per week because of pain and the need to take frequent breaks. In October 1998, Dr. H noted that claimant needed further diagnostic studies, that she was still being treated, and that epidural steroid injections were recommended. There was evidence that, and the hearing officer made a finding that, in addition to working during the filing period, claimant also sought employment with eight employers, most of which were employment staffing agencies.

In this case, our review of the record does not indicate that the hearing officer's good faith and SIBS determinations regarding the 14th compensable quarter are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. Therefore, there is no basis for disturbing her decision on appeal. The hearing officer heard claimant's testimony about the number of hours she felt capable of working. The hearing officer considered the evidence regarding claimant's work capabilities and essentially determined that claimant was able to work full time at a light-duty type of job, such as the hearing officer found that claimant had been working at at the time of her injury. The hearing officer stated that it appears that the work claimant performed during the filing period was more physically demanding than claimant's former bank employment. Claimant disputed the hearing officer's determination in this regard; however, the hearing officer was the sole judge of the credibility of the evidence and she determined what facts were established. The hearing officer considered the totality of the evidence and determined that claimant did not meet her burden to prove that she made a good faith effort to seek employment commensurate with her ability to work. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The fact that the evidence could have allowed different inferences under the state of the evidence does not provide a sufficient basis for reversing the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992.

Claimant also contends that the hearing officer erred in making her direct result determination. The hearing officer was entitled to weigh the evidence regarding the number of hours claimant was capable of working and whether her underemployment in a part-time job was a direct result of her impairment. The hearing officer was the judge of the credibility of the evidence. We have reviewed the evidence in this case and we conclude that her direct result determination is not against the great weight and preponderance of the evidence.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge