APPEAL NO. 991192

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 May 4, 1999. With respect to the issues before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the fifth quarter and that the carrier would be relieved of liability for SIBS in the period from June 23 to September 14, 1998, because of the claimant's late filing of her Statement of Employment Status (TWCC-52). In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she was assigned an impairment rating (IR) of 15% or greater for her compensable injury; that she did not commute her impairment income benefits; that the claimant's average weekly wage is $347.58; and that the filing period for the fifth quarter of SIBS ran from March 24 to June 22, 1998. The fifth quarter was identified as the period from June 23 to September 21, 1998.

The claimant testified that she began working for (employer) on May 24, 1998. She stated that she worked 10 hours per day, four days per week and that she was paid $5.15 per hour. The TWCC-52 for the fifth quarter indicates that the claimant applied for that position on the day she began working. The claimant stated that she continued to work until June 14, 1998, when she was no longer physically able to perform her job duties. She testified that at that point, her treating doctor, Dr. G, took her off work. There are no records from Dr. G to that effect in evidence. The claimant appears to assert that she does not have possession of Dr. G's records because she was unable to retrieve them from her former attorney, whom she fired after he failed to appear at a January 19, 1999, benefit review conference. The claimant did not testify or offer other evidence as to any job search efforts for the portion of the filing period from March 24 to May 23, 1998. She stated that she did not look for work after June 14th because she did not have any ability to work; however, as noted above, the claimant did not offer any medical evidence to support her assertion that she was unable to work after June 14, 1998.

The carrier introduced a report from Dr. C, the claimant's former treating doctor, who performed an anterior discectomy and interbody fusion from C4-5 to C6-7 in February 1997. In a September 4, 1997, report, Dr. C states that the claimant would be released to return to work as of October 15, 1997, with permanent restrictions against lifting over 20 pounds.

The TWCC-52 for the fifth quarter indicates that the claimant signed it on July 1, 1998. She stated that upon completion of the TWCC-52, she forwarded it to her attorney. However, the carrier did not receive the TWCC-52 until September 15, 1998, due to the former attorney's delay in sending it to the carrier.

The claimant asserts error in the stipulation that she was assigned an IR of "15% or greater" because "my [IR] is in fact 20% or greater." Initially, we note that the claimant agreed to the stipulation as it was phrased. In addition, we note that the stipulation is phrased in terms of an IR of "15% or greater" because a 15% IR is the threshold requirement for SIBS. The stipulation serves the purpose of establishing that the claimant has satisfied one of the four criteria for demonstrating her entitlement to SIBS. We perceive no error in the hearing officer's having so phrased the stipulation, rather than in terms of the actual IR assigned to the claimant.

The hearing officer determined that the claimant did not make a good faith effort to look for work in the relevant filing period. That question presented a question of fact for the hearing officer to decide. It was the hearing officer's responsibility, as the sole judge of the evidence under Section 410.165(a), to consider the evidence concerning the claimant's job search efforts in the filing period and to determine if the claimant sustained her burden of proving good faith. In making his good faith determination, the hearing officer was free to consider the nature and extent of the employment contacts made. Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996. To that end, the hearing officer noted that "the evidence shows that the Claimant inexplicably delayed her job search for two months (of a three-month period); worked for three weeks at a job within her documented restrictions, then quit that job and declined to seek another for reasons unsupported by the evidence." After reviewing the testimony and evidence, the hearing officer simply was not persuaded that the claimant had sustained her burden of proving that she made a good faith effort to look for work in the filing period for the fifth quarter. Our review of the record does not reveal that the hearing officer's good faith determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse it on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer also determined that the claimant did not sustain her burden of proving that her underemployment in the filing period was a direct result of her impairment. The direct result question was one of fact for the hearing officer. After reviewing the evidence, the hearing officer apparently was not convinced that the claimant's impairment was a cause of her underemployment. Our review of the record does not demonstrate that that determination is so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. Likewise, the fact that another fact finder could have drawn different inferences from the evidence, which would have supported a different result, does not provide a basis for us to disturb the direct result determination on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Finally, we consider the claimant's challenge to the hearing officer's determination that the carrier would be relieved of liability for SIBS for the portion of the fifth quarter from June 23 to September 14, 1998, because of late filing of the TWCC-52. The claimant does not dispute that the carrier did not receive the TWCC-52 until September 15, 1998; rather, she argues that her attorney's failure to timely file the form should not be held against her. It is well-settled that an attorney hired to represent a claimant in a workers' compensation case is the agent of the claimant. As such, his action or inaction within the scope of the agency is attributable to the claimant. See Texas Workers' Compensation Commission Appeal No. 93605, decided August 30, 1993, and the cases cited therein. Section 408.143(c) provides that the failure to file the TWCC-52 relieves the carrier of liability for SIBS for the period during which the statement is not filed. Accordingly, the hearing officer properly determined that the carrier would be relieved of liability for SIBS in this instance for the period from June 23 to September 14, 1998, due to the delayed filing had the claimant sustained her burden of proving her entitlement to those benefits.

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge