

APPEAL NO. 991239

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 12, 1999. The single issue at the CCH was whether the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the second compensable quarter. The hearing officer determined that the claimant was entitled to SIBS for the second quarter and the appellant (carrier) appeals, urging that the finding that the claimant made a good faith effort to seek employment and the conclusion that claimant was entitled to SIBS is against the overwhelming weight of the evidence. There is no response from the claimant on file.

DECISION

Affirmed.

The claimant sustained injuries on \_\_\_\_\_; has undergone non-surgical treatment; has reached maximum medical improvement; and has been assessed an impairment rating of 15% or greater. He has been released to work with restrictions at the medium capacity level with lifting restrictions. During the filing period (October 8, 1998, to January 6, 1999) the claimant, who lives in a very small community some 30 miles from (City 1), Texas, testified that he looked for employment at more than 10 places (his job search list shows 12) in his community and two other nearby communities, but was unsuccessful in finding employment because of his restrictions. During the filing period he did part-time work for a friend doing painting and carpentry-type work (he stated he had no other skills) in addition to looking for work. He earned some \$260.00 during the period from October 5, 1998, to November 13, 1998. In January, he started working in (City 2), Texas, although it was further from his home than (City 1). He also stated that he went to the Texas Rehabilitation Commission (TRC) for assistance but stated he was advised they had a "freeze." He stated that TRC gave him papers to get his GED which he is registered to start doing in (City 2). He did not look for work in (City 1) because the cost of gas was too much for the wages he could earn there.

The issue on appeal concerns whether the claimant attempted in a good faith effort to seek employment commensurate with his ability to work. The hearing officer found that a good faith effort was shown. She also found the claimant's testimony credible and persuasive. While the somewhat limited number of job searches and the areas of the search places considerable question on the good faith attempts shown by the claimant, there is the additional evidence of the contacts with TRC, taking steps to obtain a GED, and the fact that the claimant did perform some work at odd jobs involving painting and carpentry work during the period from October 5 to November 13, 1998. Although other inferences could well be made from the evidence presented, this is not a sound basis to reverse factual findings of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. From our review of the evidence, we cannot conclude that the evidence is so uncertain, inconsistent, improbable, or unbelievable as to be factually insufficient thereby rendering the decision clearly unjust. Lopez v. Hernandez, 595 S.W.2d 180, 183 (Tex. Civ. App.-Corpus Christi 1980, no writ). The hearing officer as the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)), determined that a good faith effort was shown by the evidence and we cannot find that determination was clearly wrong or against the overwhelming weight of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The decision and order are affirmed.

Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

Joe Sebesta  
Appeals Judge

Thomas A. Knapp  
Appeals Judge