

APPEAL NO. 991249

This appeal is brought 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 19, 1999. The appellant (carrier) and the respondent (claimant) stipulated that the filing period for the 22nd quarter for supplemental income benefits (SIBS) began on November 12, 1998, and ended on February 10, 1999. It is undisputed that the claimant was not entitled to SIBS for the 19th, 20th, and 21st quarters. The hearing officer found that during the filing period for the 22nd quarter the claimant in good faith sought employment commensurate with his ability to work and that his unemployment was a direct result of his impairment from the compensable injury. The hearing officer concluded that the claimant is entitled to SIBS for the 22nd quarter and that he has not permanently lost entitlement to SIBS because he has not had 12 consecutive months in which he was not entitled to SIBS. The carrier appealed, urged that the determinations of the hearing officer are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBS for the 22nd quarter and has lost entitlement to SIBS. The claimant responded, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that his decision be affirmed.

DECISION

We affirm.

The claimant filed a Statement of Employment Status (TWCC-52) with an attachment indicating 40 places where he sought employment during the filing period. Each entry contains an address and a telephone number, but six of the entries do not contain the name of the employer contacted. An interpreter was used at the hearing. The claimant testified that he learned of the prospective employers from friends and from a newspaper, that he went on a bus to look for work three or four days a week, that he usually left at about 8:00 a.m. and returned at about 1:00 p.m., that he went to each place listed and asked if they had any work, that he said something about his injury only when he had to, that at some places he was told that they did not need him or did not have work, that he thought that they had work because a friend told him or the paper said so, that if he was given an application he completed it, that he did not have any interviews, and that he thought that he was not hired because he had not worked for so long. The claimant said that he injured two discs in his low back, that he did not have surgery, that he takes pain medication, that he has restrictions, that he cannot lift heavy things, and that he cannot do a lot of bending. He said that when he was injured he was a machine operator and used a press and that now he could not perform that job. The carrier introduced a video of the claimant using equipment at a gymnasium. The claimant stated that he does go to a gymnasium to work out every now and then.

Whether the claimant made a good faith effort to seek employment commensurate with his ability to work and whether his unemployment was a direct result of his impairment

are generally questions of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 941154, decided October 10, 1994. In numerous decisions, the Appeals Panel has commented on those two criteria for the entitlement to SIBS. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a).

An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determination that the claimant is entitled to SIBS for the 22nd quarter is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer that the claimant is entitled to SIBS for the 22nd quarter and affirm that determination, we also affirm the determinations that the claimant has not had 12 consecutive months in which he was not entitled to SIBS and has not permanently lost entitlement to SIBS.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge