

## APPEAL NO. 991290

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 3, 1999. He (hearing officer) determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the third, fourth, and fifth quarters. The claimant appeals these determinations, expressing her disagreement with them. The appeals file contains no response from the respondent (carrier).

### DECISION

Affirmed.

The claimant, who is right hand dominant, sustained a compensable injury to her right hand and wrist, with radiating pain and reflex sympathetic dystrophy. She reached maximum medical improvement on April 21, 1997, and was assigned a 16% 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, and amount of, [SIBS]." The third quarter began on September 23, 1998, and the fifth quarter ended on June 22, 1999. The filing periods for these quarters were the preceding 90 days. At issue in this case is whether the claimant made the required good faith job search commensurate with her ability to work during each filing period.

On May 15, 1998, Dr. Z, the treating doctor, wrote that the claimant should avoid repetitive use of the right hand, working with the wrist in a flexed position or with vibrating tools, and may lift up to 10 pounds on an occasional basis. He also commented that repetitive use of the left hand would likely cause carpal tunnel syndrome. The claimant testified that she continues to experience aching in her right arm, cramping and muscle spasms, and that the hand stays cold. When she receives nerve blocks on a bi-weekly or monthly basis, she said, the muscles in her hand do not flex for a week.

The claimant submitted a Statement of Employment Status (TWCC-52) for the third quarter on which she listed 13 job applications. She did not begin her job search until August 25, 1998, some two months into the filing period and the day after her CCH to address entitlement to first and second quarter SIBS. Until then, she apparently believed she had no obligation to look for work. Her testimony and TWCC-52's for the fourth and fifth quarters reflected 22 and 28 job applications respectively. Her manner of selecting

potential employers, she said, consisted of looking in the newspapers and making cold calls. Her testimony included the following:

I tried to get things close to my home so I wouldn't have to drive far. And if some of them were out close to my parent's, because I stay out there with them some. Just things that would seem to jump out at me. I hate to say it that way, but that's how it was.

She said she was not aware at the time that she made the applications that she could not do the work, but upon further inquiry found out, in most cases, that the employment openings were beyond her restrictions because they involved repetitive work, such as operating a cash register, or heavy lifting. The claimant testified that she also went to the Texas Rehabilitation Commission (TRC) for a week of skills testing during the fifth quarter filing period. She said she has not received a report from the TRC advising her what types of jobs she should consider. The claimant did not work in any of the filing periods. The carrier submitted a report of its investigations of the applications the claimant said she submitted, which reflected that well under half could not be or were not verified.

The hearing officer considered this evidence and found that the claimant did not make the required good faith job search in any of the filing periods. 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. 941293, decided November 8, 1994. 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. It has also been noted that the requirement for a good faith job search generally spans the filing period where there is a return to light duty for the whole period. *See, generally*, Texas Workers' Compensation Commission Appeal No. 951832, decided December 15, 1995. Ignorance of these requirements does not excuse noncompliance with them. Texas Workers' Compensation Commission Appeal No. 951487, decided October 19, 1995. The claimant, by her own admission, only looked for work during one month of the third quarter filing period. The hearing officer could conclude from claimant's testimony that her remaining job searches were somewhat haphazard in nature without some reasonable forethought in terms of directing her efforts where she would have a better chance of success in finding of job, not only in terms of the location of the jobs, but also in light of her physical ability to work at the places where she submitted applications. In her appeal, the claimant asserts that she "was given no guidance as to what type of work I could do." Whether the claimant took reasonable steps to seek out such guidance could be considered by the hearing officer on the issue of a good faith job search. And whether the claimant made the required good faith job search was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. 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 the evidence sufficient to support the determinations of the hearing officer that a good faith job search was not made and that the claimant was not entitled to SIBS for the quarters in issue.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge