

APPEAL NO. 991362

Following a contested case hearing held on June 9, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant) failed to make a good faith attempt to obtain employment during the filing period for the 17th compensable quarter and thus is not entitled to supplemental income benefits (SIBS) for that quarter. Claimant has appealed various factual findings and the dispositive legal conclusion, arguing the evidence she contends supports a decision in her favor. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged findings.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on _____; that she reached maximum medical improvement with an impairment rating (IR) of 15% or greater and has not commuted any portion of her impairment income benefits (IIBS); that the 17th compensable quarter was from March 15 through June 13, 1999; and that the filing period for that quarter was from December 14, 1998, through March 14, 1999.

Claimant testified that at the time of her injury she was employed by (employer) as a stocker and forklift driver and had a 10th grade education; that she worked for five or six weeks after her back was injured until the injury became worse; that in 1996 she registered with the Texas Rehabilitation Commission (TRC) and in mid-1998 obtained a General Equivalency Diploma through the TRC; that she also obtained some basic computer training; that on December 1, 1998, she was released by Dr. A for sedentary work for four hours per day, five days per week; and, apparently, that sometime after the filing period she was taken off work for additional spinal surgery, which was not approved. Claimant further testified that during the filing period she visited some businesses, made some telephone calls, and mailed and faxed some resumes to the various potential employers listed on her Statement of Employment Status (TWCC-52), whose names she obtained from "the telephone book," from "the yellow pages," and by word of mouth from family members and friends. She estimated she spent approximately 60 hours on the telephone, including periods of up to 45 minutes listening to recorded "job lines." Claimant also said that she cooperated with her employment case manager from (disability management company), apparently provided by the carrier. Claimant also said she renewed her contact with the TRC in February 1999; that in late April 1999 she was approved to begin a course of retraining in medical front office work; that she attends classes three days per week; and that she expects to complete the training in September or October 1999. Claimant stated that she learned from her unsuccessful efforts to find clerical work in the medical field that she needed training or experience. There is a written notation on one of claimant's exhibits indicating contact with the Texas Workforce Commission on March 19, 1999, a date outside the filing period.

Claimant's TWCC-52 reflects that she contacted six businesses in December 1998, including three on December 11th; that she contacted six businesses in January 1999, including three on January 4th; that she contacted five businesses in February 1999, including three on February 18th; and that she contacted four businesses in March 1999, including three by fax on March 11th. She also submitted copies of one job application and documents reflecting her contact with three other prospective employers. These prospective employers included two hospitals and one medical school twice contacted. In a separate document, claimant listed the names of 55 businesses she said she called during the December 1998-February 1999 period, including her own doctor. She said she could not recall the dates of the calls. Several newspaper ads she attached were for medical front office positions.

In his affidavit, Mr. F stated that on March 2, 1999, he received claimant's TWCC-52 from the carrier to follow up on; that 10 of the employers could not confirm whether or not claimant had applied; nine confirmed that claimant did not apply; and one could not be reached at the phone number claimant provided. Mr. F further stated that on April 27, 1999, the carrier asked that he follow up with additional prospective employers; that 30 confirmed that claimant did not apply; that 20 could not confirm whether claimant applied; that two confirmed that claimant did submit an application; and that one could not be reached with the information provided by claimant.

Claimant disputes factual findings that her job search was generally self-limited to the medical field; that her job search was extremely limited in time to a few days each month and spanning no more than a week; that there was no evidence of how often telephone calls were made; that of the jobs sought from the newspaper, two of the three exceeded her restrictions; that of the approximately 15 employers listed on the TWCC-52, six verified that there were no applications on file from claimant; and that based on a totality of the evidence, claimant did not establish that she made a good faith effort to seek employment during the filing period for the 17th quarter.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the IIBS period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBS; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. We have noted that good faith is an intangible and abstract quality with no technical meaning or statutory definition. It encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and inner spirit and, therefore, may not be determined by his protestations alone. Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, citing BLACK'S LAW DICTIONARY (6th ed. 1990). Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

The Appeals Panel has said that the requirement to seek employment generally spans the entire filing period at issue. See, e.g., Texas Workers' Compensation Commission Appeal No. 960999, decided July 10, 1996. We have also stated that "[e]vidence bearing upon whether a claimant has demonstrated good faith can encompass the manner in which a job search is undertaken with respect to timing, forethought, and diligence; the degree to which these are demonstrated involved questions of fact for the hearing officer." Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

CONCUR IN RESULT:

Gary L. Kilgore
Appeals Judge