

APPEAL NO. 991365

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 June 3, 1999. With respect to the sole issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the 16th compensable quarter from April 10 through July 9, 1999. The appellant (carrier) appeals, challenging the hearing officer's determinations on direct result and good faith. The claimant responds that there is sufficient evidence to support the hearing officer's decision and it should be affirmed.

DECISION

Affirmed.

The claimant, a high school teacher, testified that on _____, he sustained an injury to his neck and back when he slipped while carrying books. The claimant testified that his treatment has consisted of physical therapy, work hardening, and injections. At the time of the injury, the claimant had no vision in his left eye due to a prior injury. In February 1997, the claimant had a corneal transplant in his right eye and is now legally blind. The parties stipulated that the claimant did not commute the impairment income benefits; that the filing period for the 16th quarter was from January 9 through April 9, 1999; and that the 16th quarter was from April 10 through July 9, 1999.

The claimant testified that during the 16th quarter filing period he had the ability to work, with restrictions. An October 1997 functional capacity evaluation (FCE) states that the claimant has the ability to perform work at a medium level: lifting up to 23 pounds occasionally, 12 pounds frequently, five pounds constantly; carrying 19 pounds; and sitting 30 to 45 minutes. A May 1999 FCE indicates the claimant has the ability to perform work at a light/sedentary level: sitting 20-30 minutes, standing 10-20 minutes, and walking 5-10 minutes.

The claimant testified that during the filing period, he made 31 job contacts in the small town where he lives, (state). His method is to canvas one half of the town every other filing period so that he does not cover the same potential employers every filing period. The claimant testified that he sought positions in sales, customer service, and any other position he thought he could perform; that he visited the (City 1) Job Service twice; and that he was called back by one potential employer. He has not been offered a job. The claimant presented statements of neighbors and friends indicating that he is capable of performing various tasks, and photographs of himself working in his garden, to support his position that his impaired vision and his age of 68 years does not prevent him from working. The claimant testified that he has to rely on someone to complete his paperwork and drive him to search for employment.

The carrier asserts that the claimant looked for employment at only 31 places, his job search consisted of cold calls, many of the places he applied had no openings or were outside his restrictions, and he did not have a resume until after the benefit review conference. The carrier argues that at this stage of the claim, the claimant should be seeking employment at more than three jobs per week, his job should be seeking employment, and his job search should reflect this attitude. It is the carrier's position that the claimant's unemployment is not a direct result of his impairment from the compensable injury, but due to his age and his impaired vision.

Section 408.143 provides that an employee continues to be entitled to SIBS after the first compensable quarter if the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has made a good faith effort to obtain employment commensurate with his or her ability to work. 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.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer, after considering all of the evidence, determined that the claimant's job search was reasonably calculated to lead to employment commensurate with his ability to work. Whether the claimant made a good faith effort to seek employment commensurate with his ability to work was a question of fact for the hearing officer to resolve. Although the claimant's search for employment did not reflect a search on every day of the filing period, the number of days that searches are made is but one factor that may be considered by the hearing officer in determining whether a claimant made a good faith effort. In Workers' Compensation Commission Appeal No. 982222, decided October 22, 1998, the Appeals Panel stated that a good faith job search may consist of cold calls and yield the existence of employers who are not hiring. We find sufficient evidence to support the hearing officer's finding that the claimant attempted in good faith to obtain employment commensurate with his ability to work.

The hearing officer found that the claimant's unemployment during the filing period for the 16th quarter was a direct result of the claimant's impairment, and that the claimant's impairment precluded his return to his preinjury employment or employment with physical requirements which were substantially the same as his preinjury employment. The claimant testified that he could no longer perform his previous job as a high school teacher because of lifting, standing, and sitting restrictions. The hearing officer's direct result

determination is sufficiently supported by evidence that the claimant sustained a serious injury with lasting effects and that, during the filing period, he could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 93559, decided August 20, 1993; Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge