APPEAL NO. 991383

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On June 4, 1999, a hearing on remand was conducted. Texas Workers Compensation Commission Appeal No. 990298, decided March 31, 1999, had affirmed certain determinations, in regard to this supplemental income benefits (SIBS) case, which stated that respondent's (claimant) unemployment was a direct result of his impairment and that the evidence did not require a finding of fact in regard to cooperation with the Texas Rehabilitation Commission (TRC). The case was remanded to continue testimony from a witness for appellant (self-insured) which had been stopped after repeated outbursts by the claimant; the testimony was addressing claimant's job search in regard to that part of SIBS entitlement which relates to whether or not an attempt was made in good faith to obtain employment commensurate with claimant's ability to work. The hearing officer determined, on remand, after hearing the evidence presented by self-insured, that claimant did contact 34 employers in the filing period, attempted in good faith to find work, and was entitled to SIBS for the seventh quarter. Self-insured asserts that claimant did not seek employment in good faith, stating that claimant presented no evidence, applied for jobs for which he was not qualified, was not credible, and did not contact all of the employers he listed. The appeals file contains no reply by claimant.

DECISION

We affirm.

Claimant did not attend the hearing on remand. The appeals file contains no copy of a notice of hearing to be held on June 4, 1999, but the ombudsman stated on the record that she had spoken to claimant, who "elected not to appear today." The purpose of the remand was to assure that self-insured could provide testimony from its witness without interruption by claimant's repeated exclamations addressing the truthfulness of particular answers (not objections to questions asked and not objections as to responsiveness) at the initial hearing; self-insured involuntarily ceased presentation of its evidence at the direction of the hearing officer although no determination was made that testimony was not admissible. Neither party should be allowed to dictate presentation of evidence by outbursts as to the truthfulness of answers being given. PT was allowed to complete her testimony at the hearing on remand without untoward comments by the claimant.

PT testified that several employers she called did not have an application on file from claimant. In answer to questions by the hearing officer, she could not state how long the person providing the information had worked for that employer; she identified the office most informants were in, Personnel, but could not state the particular position held by most contacts. PT did identify several employers who had no telephone listing in the area after she had attempted to call the number listed by claimant, and at least one in which the business was owned by a husband and wife with the wife answering that she did not recall claimant, then questioning her husband, and replying further that he did not recall claimant. In addition, PT noted that three of the 34 listings were for positions such as quality control

inspector, commercial sales representative, and telemarketer that contain no employer name or phone number, correct or incorrect.

Self-insured states in its appeal that claimant presented no evidence. This is incorrect; the hearing officer duly admitted all the evidence, exhibits and testimony, from the initial hearing. Although claimant was not present at the hearing on remand, his evidence was.

As to the jobs listed by claimant, self-insured asserts that some were for jobs claimant was not qualified to do; one position was cited involving tax and regulatory work. (A review of the remainder of the positions listed showed primarily sales and clerk positions, showing no pattern of jobs sought beyond the qualifications or limitations of the claimant.) The appeals panel has said in Texas Workers' Compensation Commission Appeal No. 961671, decided October 1, 1996, that, just because some jobs were not within a claimant's ability, an absence of good faith did not necessarily result. If a claimant sabotaged his own job search, that would have a different effect.

An assertion was made that claimant's testimony was not credible. Credibility is a matter for the hearing officer to decide upon consideration of all the evidence. He may believe that claimant was truthful in listing his 34 contacts; he did not have to believe that any of the responses PT received from her contacts of employers listed, among those located, indicated that claimant did not contact a listed employer. Just because another fact finder may have drawn different inferences from all of claimant's evidence (including that 15 contacts were listed based on resumes sent by claimant and one contact was made in (city)) and all the testimony of PT is no reason for the hearing officer's factual determinations to be overturned. The hearing officer indicated in his Statement of Evidence that the additional evidence presented by PT at the hearing on remand was "not probative"; this, along with his finding of fact that claimant did contact 34 employers and his comments in the transcript of the hearing on remand, indicate that the hearing officer found the claimant credible. Section 410.165 states that the hearing officer is the sole judge of the credibility of the evidence.

While self-insured lists questions raised by PT's contacts of employers listed, the hearing officer could choose the amount of weight to assign to information PT provided concerning claimant's contacts, existence of certain employers, and limited information claimant provided on his request for SIBS.

Self-insured also addresses a determination that claimant's unemployment was a direct result of the impairment and the absence of a finding of fact regarding lack of cooperation with TRC; these points were addressed in Appeal No. 990298, *supra*, as either sufficiently supported by the evidence or as not requiring a finding of fact based on lack of evidence of any failure to cooperate within the filing period in question. Neither was set forth for reconsideration on remand, and we see no additional evidence presented in regard to either that could affect our original determination even if these points were set forth for consideration on remand.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Tommy W. Lueders
Appeals Judge