

APPEAL NO. 991401

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 7, 1999. With respect to the issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 16th quarter. In his appeal, the claimant argues that the hearing officer's determinations that he did not make a good faith job search in the filing period for the 16th quarter and that he is not entitled to 16th quarter SIBS are against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant's underemployment in the filing period for the 16th quarter was a direct result of his impairment.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____. The parties stipulated that the claimant's compensable injury resulted in an impairment rating of 15% or greater and that the 16th quarter of SIBS ran from March 3 to June 2, 1999, with a corresponding filing period of December 3, 1998, to March 2, 1999.

The claimant testified that he made approximately 110 employment contacts in the filing period for the 16th quarter. He listed the employers on the pages attached to his Statement of Employment Status (TWCC-52) and in addition, he submitted a diary in which he documented everything he does to look for work. The claimant testified that he found many of his job leads at the Texas Workforce Commission and that he follows up on the leads provided to him by the vocational rehabilitation company retained by the carrier. The hearing officer noted in the discussion section of his decision that the claimant was "articulate and able to provide details of his inquiries" and that the "Claimant's testimony along with his documentary evidence reflected that he spent a great deal of time during the qualifying period contacting employers and verifying these efforts."

Ms. L testified that she is a vocational rehabilitation consultant who has been assigned to work with the claimant since January 1999. Ms. L stated that she met with the claimant on March 2, 1999, and he gave her his TWCC-52 for the 16th quarter. Ms. L testified that she began verifying the claimant's job search efforts on the day after she received his application. Ms. L stated that she contacted Ms. JS, the store manager at a convenience store where the claimant had applied; that Ms. JS told her that she had interviewed the claimant on the day he submitted his application; that Ms. JS had offered the claimant a job as a cashier paying \$6.00 per hour; and that the claimant had turned down the position. The carrier offered an unsworn, handwritten statement from Ms. JS, which states:

On January 14, 1999, [claimant] came in & filled out an application. I offered him a position as cashier for \$6 hr. [Claimant] informed me he makes more money on Workman's Comp & the only reason he came in is because TEC [Texas Employment Commission] made him.

Ms. L also testified that she contacted Mr. F at a collection agency, where the claimant had also applied, and learned that Mr. F left a message on the claimant's answering machine on January 11, 1999, advising him that he had been hired as a telephone collector and that he should report to work on January 12, 1999. Ms. L stated that Mr. F told her that the claimant did not report to work and did not contact the employer about the job offer.

The claimant denied that he turned down a job at the convenience store, insisting that Ms. JS never offered him a job. In addition, the claimant testified that he never received a message from Mr. F telling him that he had been hired to work for the collection agency. The claimant maintained that he followed up with that employer several days after his interview and was told that a decision on his application had not been made.

The hearing officer determined that the claimant did not make a good faith effort to look for work in the filing period for the 16th quarter. That question presented a question of fact for the hearing officer to resolve. It was the hearing officer's responsibility, as the sole judge of the evidence under Section 410.165(a), to consider the evidence and to determine if the claimant sustained his burden of proving good faith. In his discussion, the hearing officer stated:

In this case, the Claimant appeared to have made numerous contacts with potential employers during the qualifying period and documented those inquiries very well. However, with the refusal of employment from [convenience store] along with the offer from [Mr. F] with no response afterward indicated that the Claimant was not making a genuine attempt to find work. Rather, it appeared to this Hearing Officer that the Claimant was trying to document job contacts in order to qualify for workers' compensation benefits.

The hearing officer was free to consider those factors in resolving the good faith issue. Likewise, the hearing officer was acting within his province as the fact finder in accepting the testimony of Ms. L and the statement from Ms. JS over the claimant's denial that he had ever turned down a position or failed to respond to a message offering him employment. The hearing officer was required to resolve the conflicts and inconsistencies in the testimony and evidence and to decide what facts had been established. After reviewing the testimony and evidence, the hearing officer simply was not persuaded that the claimant made a good faith search for employment in the filing period. Our review of the record does not reveal that the hearing officer's determinations that the claimant did not make a good faith effort to seek employment in the filing period for the 16th quarter and that he is, therefore, not entitled to SIBS for that quarter are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d

629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The fact that another fact finder could have drawn different inferences from the evidence, which would have supported a different result, does not provide a basis for us to reverse the decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge