

APPEAL NO. 991462

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 16, 1999, a contested case hearing was held. He determined that respondent (claimant) is entitled to SIBS for the fifth compensable quarter. Appellant (carrier) appealed the hearing officer's determination that claimant is entitled to SIBS. The appeals file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant was entitled to SIBS for the fifth compensable quarter. Carrier contends that there were many reasons to question claimant's credibility in his testimony, as set forth in its brief.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the impairment income benefits (IIBS) period expires if the employee has: (1) an impairment rating (IR) of at least 15%; (2) not returned to work or has earned less than 80% of the 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. Although the claimant's good faith effort must, generally, span the filing period, the Appeals Panel has stated that a claimant's job search does not have to encompass a certain length of time. Texas Workers' Compensation Commission Appeal No. 961454, decided September 11, 1996; Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. There is no requirement that a claimant look for work every day of the filing period. Texas Workers' Compensation Commission Appeal No. 960818, decided June 3, 1996. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

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 is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been 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 great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The parties stipulated that: (1) claimant sustained a compensable injury on \_\_\_\_\_; (2) claimant did not elect to commute his IIBS; and (3) the fifth compensable quarter was from April 4, 1999, to July 3, 1999. The hearing officer determined that claimant's IR was over 15% and that the filing period for the fifth compensable quarter was from January 4, 1999, to April 3, 1999.

Claimant testified that his compensable injury was to his left knee and that he underwent three surgical procedures on the knee. Claimant testified that he made 49 job contacts during the filing period in this case. He said he checked the newspaper for job advertisements and also checked with the Texas Workforce Commission. Claimant testified that he obtained some training through the Texas Rehabilitation Commission and that he obtained short-term employment during the filing period

In an October 2, 1997, letter, Dr. O stated that claimant is still unable to do squatting and kneeling, that he has reached maximum medical improvement, and that he is unable to return to a gainful activity which requires heavy stress on his lower extremities. Dr. O also noted that claimant would not be able to climb ladders. A January 7, 1999, disability certificate from Dr. C states that claimant has been released to work but is unable to do any climbing or jumping or standing for a long time, and that he should not be in a cold environment for a long time. On April 6, 1999, Dr. C signed a letter and checked a box that indicated that claimant could do heavy-duty labor, with specifics regarding lifting, sitting, standing, and walking. That letter did not state anything about whether other work restrictions were still in effect and at the bottom, in handwriting, it states "note: call me for further explanation." What appears to be Dr. C's signature appears below this handwritten note.

The hearing officer determined that claimant had some ability to work and that his 49 job contacts he made during the filing period, as well as his other efforts to find a job, constituted a good faith effort to find employment commensurate with his ability to work. Our review of the record does not indicate that the hearing officer's good faith determination regarding the fifth compensable quarter is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Therefore, there is no basis for disturbing his decision on appeal. The hearing officer heard claimant's testimony about his job search and the testimony from carrier's field case manager about whether she was able to verify claimant's job contacts. The evidence carrier emphasizes that concerns claimant's credibility was for the hearing officer to consider. The fact that the evidence could have allowed different inferences under the state of the evidence does not provide a sufficient basis for reversing the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992. The hearing officer could also weigh the evidence and determine that claimant has continuing work restrictions. The evidence that claimant continues to have work restrictions supports the hearing officer's direct result determination. Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge