APPEAL NO. 991470

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On June 15, 1999, a hearing was held. He determined that appellant (claimant) did not attempt in good faith to find employment commensurate with her ability in the filing periods for both the 14th compensable quarter and the 15th compensable quarter. Claimant asserts that the preponderance of the evidence shows she attempted in good faith to find work in both filing periods, adding that she had 34 job contacts in one and 28 in the other. Respondent (carrier) replied that the decision should not be disturbed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when, she testified, she hurt her foot and her back (her description of the event does not make it clear whether she fell or somehow twisted so as to injure both her back and foot); she did add, "I actually think, too, may have hurt my neck at that all–you know, at that same time, because I don't see how it could not have got hurt at that time." The parties stipulated that there was a compensable injury, an impairment rating of at least 15%, no commutation of benefits, and that the filing periods for the 14th and 15th quarters began, respectively, on August 24, 1998, and November 23, 1998.

Claimant testified that she has restrictions and can do sedentary work. There was no dispute of that assertion. Claimant's job contacts, considering both filing periods, primarily included electronics firms (similar to the employment she had when injured), banks (for teller positions), and flower shops. She testified to obtaining job leads from newspapers, telephoning the employer listed, and then presenting in person about the job in question. She said she thereafter faxed her resume to have some evidence of the contact to show the carrier. All of claimant's offered evidence was admitted into the record. Claimant did testify that two employers offered her a position but that she could not accept either because they both involved lifting beyond her capability. She indicated that she was attempting to get a General Equivalency Document (GED) through the Texas Rehabilitation Commission (TRC). (TRC records show that it recommended claimant work on her GED, and offered some funding for testing, in October 1998; in late March 1999, a TRC entry indicates that claimant was applying for jobs for which she did not have the requisite educational requirements.)

Carrier stressed the records of the TRC, including an entry dated March 9, 1999, which showed that claimant "only attended GED class for one day," although it also states, in handwriting, that she worked at home on her GED. KS testified on behalf of the carrier that she contacted employers claimant listed. She testified that her communications with banks, and some other employers claimant applied to, indicated that a high school education was required. She also stated that some employers had no record of claimant.

Claimant on rebuttal pointed out that the advertisements in newspapers did not state the education requirements for certain jobs she sought and did not indicate that lifting was necessary in other jobs.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He commented in his Statement of Evidence that claimant did not have the qualifications for many jobs she sought. He also concluded, based on reasonable inferences from the evidence, that claimant's search "appeared aimed towards qualifying for supplemental income benefits rather than getting a job." Good faith in attempting to find work is a factual determination for the hearing officer to make from all the evidence in the record. The hearing officer has the opportunity to observe the claimant and any other person testifying, and one of his responsibilities is to consider the credibility of that testimony and other evidence. Also in the record was a video of claimant, which the hearing officer did not comment upon and which does not appear to show anything relevant to a person who conducted a job search. The Appeals Panel will only overturn a hearing officer on a factual determination when the determination is against the great weight and preponderance of the evidence. In this case, the evidence presented factual questions for the hearing officer to address, and his determinations were not against the great weight and preponderance of the evidence.

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).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Dorian E. Ramirez
Appeals Judge