APPEAL NO. 991503

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On March 9, 1999, a hearing was held. She (hearing officer) closed the record on June 8, 1999, and determined that appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the first and second compensable quarters. Claimant asserts that he should be entitled to SIBS for the second quarter, stating that he made a significant number of contacts for work despite his limitations (described as limited education, inability to speak English, and limited unskilled job opportunity). Claimant also stated that the finding in his favor that said his unemployment was a direct result of the impairment "should be sufficient to qualify claimant for SIBS." Respondent (carrier) replies that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on January 1, 1997. He testified that at that time he worked as a floor hand and motor man on an oil platform. He stated he worked with dangerous, heavy machinery. The parties stipulated that claimant's right eye was compensably injured that day (when a small piece of metal struck, and lodged, in that eye). Claimant said he had surgery to remove the metal and then had surgery for cataracts that developed. He also testified that he did not miss work until he was laid off in August 1998. The parties stipulated that the filing period for the second quarter began on August 26, 1998.

The parties also stipulated that claimant's impairment rating is 17% and that he has commuted no income benefits. There was no appeal taken to a finding of fact that said claimant was not entitled to SIBS for the first quarter because of the amount of wages he earned during the filing period therefor.

Claimant testified that during the filing period of the second quarter he made 18 job contacts. Three employers were seen twice and another employer, with two different locations, was seen twice also. There was no appeal of findings of fact that said claimant made 14 job contacts and also repeated some contacts.

Dr. M stated in _____ that claimant had a serious eye injury which greatly reduced his vision and affected his depth perception. He added that claimant had been working and "should be able to continue but he should not be around moving machinery nor doing heavy work." In answer to a question of whether a doctor had given him a full-duty release in August, claimant implied that one had because his employer wanted such a letter (apparently before it laid him off). Dr. G in October 1998, said that he warned claimant "not to participate in any activities which may put his limbs and those of others at risk." On November 18, 1998 (the filing period for the second quarter ended on November 24, 1998), Dr. G wrote that claimant should avoid operating heavy machinery or driving at

night, should lift no more than 25 pounds, and should not work on ledges or scaffolds. The hearing officer found that claimant was restricted by Dr. G as to the work he could do during the filing period for the second quarter, but that claimant sought work as a mechanic, as a mechanic's helper, and as a worker with concrete, brick, and steel. In addition, the hearing officer then found that claimant had lasting effects of the impairment, could not return to his old job, and was unemployed as a direct result of the impairment. None of these findings were appealed.

Claimant sought jobs as described by the hearing officer. In addition, he responded to questions by the carrier by indicating that eight employers he contacted were not hiring.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She noted in her Statement of Evidence that claimant did not seek employment commensurate with his abilities and she specifically found that the employment claimant sought was "not commensurate with his physical restrictions and abilities." Claimant appeals this finding of fact, but the testimony was that positions sought, such as those of a mechanic, would require lifting of 25 pounds or more. Therefore, the hearing officer's finding that claimant sought employment not commensurate with his physical restrictions is sufficiently supported by Dr. G's restrictions and other evidence of record, including claimant's request for payment of SIBS in which he listed the jobs he sought.

With evidence that over half the employers were not hiring and that claimant sought work in areas that could be interpreted as beyond his medical restrictions, the hearing officer, as fact finder, could determine that claimant had not shown evidence of good faith in his job search involving 14 employers. A good faith job search is a requisite for awarding SIBS when there is some ability to work. *See* Sections 408.142 and 408.143. The determination regarding good faith is a question of fact for the hearing officer to make. *See* Texas Workers' Compensation Commission Appeal No. 950706, decided June 15, 1995. The Appeals Panel will only reverse the hearing officer regarding a factual determination when it is against the great weight and preponderance of the evidence, which does not describe the evidence in the case under review.

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:

_____
Elaine M. Chaney
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge