

APPEAL NO. 991532

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 30, 1999. The single issue at the CCH was the appellant's (claimant) entitlement to supplemental income benefits (SIBS) for the 12th compensable quarter. The hearing officer determined that the claimant did not establish that he made a good faith effort to obtain employment commensurate with his ability to work and thus was not entitled to SIBS for the quarter in issue. The claimant appeals, urging that his prospective job contacts and other efforts demonstrated that he made a good faith effort to obtain employment, that the hearing officer erred in noting that the claimant could not perform custodial/maintenance work, and that he was entitled to SIBS. The respondent (self-insured) urges that there is sufficient evidence to support the decision.

DECISION

Affirmed.

The claimant, a gentleman 70 years of age, sustained a compensable back injury on _____, and continues to have sitting, standing, walking, and lifting restrictions. According to a medical report and a functional capacity assessment, the claimant can perform in the sedentary physical capacity level. The report and assessment state that he cannot meet the physical demands of his prior job as a custodian but that he is capable of working in a sedentary-type position. The claimant testified and presented notes of job contacts that indicated he made approximately 40 job contacts, sometimes by person and sometimes by telephone, during the filing period (January 29 to April 27, 1999) for the 12th quarter. The job contacts all appear to be in the custodial/maintenance area and, although he acknowledged he could not perform his previous job, he thought he could perform some of the lighter functions. His contacts did not result in any interviews or any offers. He also stated that he contacted the Texas Rehabilitation Commission but they could not assist him, and that he was in frequent contact with the Texas Workforce Commission who wrote a letter stating he was diligent and conscientious in his effort to seek employment.

The self-insured called the claims adjuster handling the claimant's case. She testified that she had contacted a number of the places listed by the claimant and in many instances the person the claimant stated he contacted has not worked for the particular employer for a long time. She also testified that basically the claimant contacted those same employers that he contacted in previous quarters even though some of them had no openings.

The hearing officer found that the claimant's efforts to find work lacked the objective manifestations of good faith with respect to time, forethought, and diligence, and that he did not make a good faith effort to obtain employment commensurate with his ability to work. The Appeals Panel has generally defined good faith as a subjective notion characterized by honesty of purpose and being faithful to one's obligations. Texas Workers' Compensation

Commission Appeal No. 941293, decided November 8, 1994 (Unpublished). Whether the required good faith job search exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. We have also cautioned that good faith is not established simply by some minimum number of job contacts, but a hearing officer may consider "the manner in which the job search is undertaken with respect to timing, forethought and diligence." Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996. The hearing officer was not convinced that a good faith effort was shown and, in so deciding, could consider the claimant's limited efforts of seeking employment at the same locations regardless of whether any positions were available and for positions that medical evidence indicates he was not physically qualified to do. Further, there was evidence that the hearing officer could consider that the claimant was not making the contacts he listed, given the investigation conducted by the adjuster. While there was some evidence to support the claimant's position that he made a good faith effort, we cannot conclude from our review of the evidence that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Applying this standard of review, we find no sound basis to disturb the decision and thus approve the decision and order.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge