

APPEAL NO. 991568

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 1, 1999. The appellant (carrier) and the respondent (claimant) stipulated that the claimant was entitled to supplemental income benefits (SIBS) for the first quarter and that the filing period for the third quarter for SIBS began on January 1, 1999. The hearing officer made the following findings of fact and conclusions of law:

FINDINGS OF FACT

5. On _____, the Claimant sustained a serious injury with lasting effects that prevented him from returning to the type of work that he did when he was injured.
6. During the filing period, the Claimant had not returned to work as a direct result of his impairment from his compensable injury.
7. During the filing period, the Claimant attempted to return to employment with his previous employer, but was unable to do so because his medical and physical restrictions were not known yet. His former employer kept a position of employment open for the Claimant and in good faith offered to accommodate his restrictions and assign work within his ability to work.
8. During the filing period, the Claimant attempted in good faith to obtain employment commensurate with his ability to work.

CONCLUSIONS OF LAW

2. The Claimant was not excused from attempting to find work during the filing period for the third compensable quarter, as the Claimant did have some ability to perform some work.
3. The Claimant is entitled to [SIBS] for the third compensable quarter of April 2 through July 1, 1999.

The carrier appealed Findings of Fact Nos. 5 through 8 and Conclusion of Law No. 3, contended that they are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBS for the third quarter. The claimant responded, urged that the evidence is sufficient to support the appealed determinations of the hearing officer, and requested that his decision be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be contained in this decision. The claimant worked for a subcontractor and the general contractor provided workers' compensation insurance for the employees of the subcontractor. The claimant injured his right upper extremity in _____. Dr. S performed four surgeries, including a fusion at the right wrist. The last surgery was in August 1998, and the claimant was placed in a cast. On November 24, 1998, the plaster cast was removed; the claimant was provided a removable splint; and he was kept off work to allow further time for the fusion to mature. On January 28, 1999, Dr. S requested a functional capacity evaluation (FCE) so that the employer could be advised what work was safe for the claimant to do. In an office note dated February 16, 1999, Dr. S said that it was the first visit after hardware removal, that the claimant should continue to use the splint, and should keep the appointment for the FCE on February 23, 1999. In a return-to-work slip dated March 9, 1999, Dr. S stated that the claimant may return to work with the restrictions listed in the FCE summary sheet attached. In a return-to-work slip dated April 14, 1999, Dr. S wrote that the claimant may return to work four days a week under the FCE restrictions. In a letter dated February 9, 1999, the employer stated that the claimant had a job with it as soon as he was available to return to work. In another letter dated March 27, 1999, the employer said that the claimant had a job when he is ready to report and is allowed to return. On May 7, 1999, the employer advised that the claimant returned to work on April 26, 1999. The claimant testified that he was released to return to work by his doctor on March 10, 1999; that the employer would not let him work until the doctor provided his restrictions; and that the doctor did that on April 14, 1999. The claimant agreed that he could have done some of the light-duty work for the employer prior to that time, but that the employer would not let him work until it received the restrictions from his doctor.

In Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995, the Appeals Panel stated that it had held that a finding of direct result is sufficiently supported by evidence that a claimant sustained a serious injury with lasting effects and that he could not reasonably perform the type of work he was doing at the time of the injury and wrote "[b]ecause he was unable to search for employment as a direct result of his impairment for at least half of the qualifying period, we hold that, as a matter of law, he met the 'direct result' criteria for the period of time in question." In determining whether good faith was shown in seeking employment, consideration can be given to the manner in which a job search is made and timing, forethought, and diligence may be considered in determining whether a good faith job search was made. Texas Workers' Compensation Commission Appeal No. 961195, decided August 5, 1996. In Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, the Appeals Panel rejected the contention that a certain number of job applications showed good faith and stated the following about good faith:

In common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In the statement of the evidence in his Decision and Order, the hearing officer indicated that the claimant had no ability to work until February 23, 1999; that that was just over one half of the filing period; that the claimant's inactivity in looking for a job for weeks was not an indication of dishonesty or evasion of his obligation to eventually return to work; that the claimant sought employment with his former employer; that he exhibited good faith in obtaining the employment by trying to discover what work he could safely do; and that the claimant and his doctor worked together to get the claimant back to work safely as soon as they could. The hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge