APPEAL NO. 991632

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 12, 1999, a contested case hearing (CCH) was held. The issue disputed at the CCH was whether the respondent, who is the claimant, was entitled to supplemental income benefits (SIBS) for the first quarter of eligibility.

The hearing officer held that the claimant was entitled to SIBS, because she made a good faith search for employment commensurate with her ability to work. He further found that her unemployment was a direct result of her impairment.

The appellant (carrier) appeals, arguing that the low number of job contacts made by the claimant is legally insufficient to constitute a good faith search. The carrier points to the testimony of its vocational counselor that there are numerous jobs in the metropolitan area within the claimant's capabilities. The direct result finding is not appealed. The claimant responds that the sufficiency of the job search is a matter of fact for the hearing officer to find. The claimant further points out that the vocational counselor was not able, and did not attempt, to identify positions that fell within the claimant's restrictions, experience, and education, notwithstanding her generalized testimony that they were numerous.

DECISION

We find sufficient evidence to support the decision of the hearing officer on the appealed point.

It is worth pointing out that future quarters of SIBS eligibility for the claimant will fall under new administrative rules which may affect the nature and scope of job-finding efforts that will need to be made to qualify for SIBS. *See, specifically,* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) and (e) (Rule 130.102(d) and (e)).

The claimant injured her hands on _____, while employed by (employer). A machine fell on and crushed her fingertips, resulting in amputation on some of them on each hand. She stated that she could no longer grasp strongly, because her fingers could not bend as readily or at all. As a result, she also had trouble performing cleaning operations as her fingers would "jam" against cleaning equipment resulting in further pain, when she attempted to manipulate or grasp. She had a 25% impairment rating (IR).

The claimant had only a sixth grade education. She did not speak English. Between January 1999 and April 1999, she was enrolled in English as a Second Language (ESL) courses, and also was seeking her GED. The filing period ran from January 6 through April 6, 1999.

The claimant said that she sought employment with at least six employers (there was some testimony indicating that she may have made two to three other contacts she did

not write down). She said she was offered a job by one of them, a Chinese restaurant, but that the job offer was withdrawn for reasons she did not know. However, the claimant testified that she did not have legal status and therefore the proper documentation. She said most places she contacted for jobs wanted someone who could speak English.

The vocational counselor for the claimant, Ms. P, met with her in October 1998 to assess her employability (and then not again until March 1999). It was Ms. P's impression that claimant could work at the light-duty classification. She testified to her impression that there were numerous jobs in the area within this classification. However, she said she did not make referrals of specific positions at all to the claimant, as she was not asked to do so, but merely made referrals to GED or ESL classes in the locale. There was evidence that the Texas Rehabilitation Commission did not extend services to the claimant because of her undocumented status. Ms. P attempted to verify the positions that claimant sought, but was only able to actually contact two prospective employers, one of whom said that no one who was only Spanish-speaking had come in to personally apply over the last year. The other stated only that there was no one by the name that claimant had listed on her job contacts as the person she spoke to at that company. Claimant's undocumented status has not been advanced on appeal as a basis for setting aside the findings on the "direct result" criteria, nor is it mentioned in the appeal. We therefore are limited to review of the evidence on claimant's job search efforts.

Pursuant to Section 408.142, an employee is entitled to SIBS if, on the expiration of the impairment income benefits (IIBS) period, the employee: has an IR of 15% or more; has not returned to work or has returned to work earning less than 80% of the employee's average weekly wage as a direct result of the employee's impairment; has not elected to commute a portion of the IIBS; and has attempted in good faith to obtain employment commensurate with the employee's ability to work. The Appeals Panel has noted that good faith is an intangible and abstract quality with no technical meaning or statutory definition. It encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and inner spirit and, therefore, may not be determined by his protestations alone. A claimant's overt actions are factors to also consider in establishing good faith. Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, citing BLACK'S LAW DICTIONARY (6th ed. 1990). Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d

619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). There was evidence of six documented, and a few other, job contacts that support the hearing officer's decision, although different inferences could be drawn. In considering all of the information here, even though different inferences could have been drawn, we cannot agree that the great weight and preponderance of the evidence compels a reversal of the decision made by the hearing officer in this case that this search, for the first quarter of SIBS, was commensurate with the claimant's overall ability to work. In light of the change in rules, it is important to emphasize, again, that the decision in this case is not binding on future quarters or dispute resolution officers. We affirm, however, the decision and order in this case.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Tommy W. Lueders
Appeals Judge