

APPEAL NO. 991642

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 July 6, 1999. With respect to the sole issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 17th quarter. The claimant appeals, urging that the great weight of the evidence is contrary to the hearing officer's determination that the claimant did not make a good faith effort to seek employment commensurate with her ability to work. The respondent (carrier) replies that the evidence supports the hearing officer's decision and it should be affirmed.

DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury resulting in an impairment rating of 15% or greater; that the claimant has not commuted any portion of her impairment income benefits; that the qualifying period for the 17th quarter began on February 3, 1999, and ended on May 4, 1999; and that during the qualifying period the claimant was unemployed and earned no wages. The claimant testified that she injured her back on \_\_\_\_\_, when she fell off of a ladder; that during the qualifying period she lived in state; that she received medical care from her treating doctor, Dr. A, on a monthly basis; that her medical treatment consisted of injections, medications, and ointments; and that she was able to work with restrictions of no lifting over 10 pounds, no bending, and no twisting.

Throughout the qualifying period, the claimant attended school at the Learning Center in (City), State, taking classes for her GED and to learn English. The classes were from 8:30 a.m. until 12:30 p.m., Monday through Thursday. The claimant testified that she searched for employment by reading the newspaper and utilized the services of the (Country) Vocational Rehabilitation Center and the (Country) Department of Labor. The claimant testified that she visited the (Country) Department of Labor every Tuesday and Thursday, but only received one job lead because of her restrictions. According to the claimant, the documents attached to her Statement of Employment Status (TWCC-52) indicate the dates and contacts she made with prospective employers and the dates she followed up with prospective employers.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBS after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Rule 130.102(d), effective January 31, 1999 (a new SIBS rule), provides in pertinent part that "[a]n injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee: . . . (4) has provided sufficient documentation as described in subsection (e) of this section to show that

he or she has made a good faith effort to obtain employment. Rule 130.102(e), effective January 31, 1999, provides in pertinent part that "[e]xcept as provided in subsections (d)(1), (2), and (3) of this section, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." Since the qualifying period for the 17th quarter began on February 3, 1999, when the new SIBS rules were in effect, entitlement to SIBS for the 17th quarter is determined in accordance with the new SIBS rules.

The hearing officer, in the Statement of the Evidence, indicates that the evidence establishes that during the period of February 3, 1998, through February 22, 1998, the claimant submitted 11 applications for employment; that there were no further applications for employment submitted throughout the remainder of the qualifying period; and that the claimant did not demonstrate a continued, week-by-week search for employment. The claimant's appeal asserts that as a result of the claimant's contact with the Department of Labor, the claimant demonstrated a continued week-by-week search for employment. The carrier responds that the claimant arguably made a good faith effort to obtain employment during the initial four weeks of the qualifying period, but that, for the final 55 days of the qualifying period, the claimant made only three follow-up contacts with employers she had previously approached.

Pursuant to Rule 130.102(e), the claimant was required to look for employment every week of the qualifying period and to document her efforts. Although the claimant testified that she visited the (Country) Department of Labor every Tuesday and Thursday during the qualifying period, the hearing officer was the sole judge of the credibility of this testimony. Further, she documented only one prospective employer she contacted on February 16, 1999, as a result of her visits. Other than this one contact, the claimant did not document her purported job search efforts made through the (Country) Department of Labor and did not provide any documentation of her job search efforts for the weeks of March 15, March 22, April 12, April 19, and April 26, 1999, as Rule 130.102(e) requires.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's determinations that the claimant has not attempted in good faith to obtain employment commensurate with her ability to work and is not entitled to SIBS for the 17th quarter.

The decision and order of the hearing officer are affirmed.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge