APPEAL NO. 991663

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 14, 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 23rd 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. She further found that claimant's unemployment was a direct result of her impairment.

The appellant (carrier) appeals, arguing that the seriousness of claimant's injury was dubious and that there had been little effort by her treating doctor to determine her true abilities. The carrier argues that there is no evidence, or scant evidence, to support the hearing officer's observations that claimant had a serious injury directly resulting in her unemployment. The carrier also points out facts underlying its belief that no credible evidence exists to support a good faith search for employment. The claimant responds that the decision should be affirmed.

DECISION

We affirm and find sufficient evidence to support the decision of the hearing officer on the appealed points.

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.

The claimant injured her back while lifting on _____, while employed by a temporary services company; the bulk of her impairment rating (IR) was for range of motion deficits, as an MRI taken on October 3, 1995, showed only degenerative desiccation at L5-S1 with no bulging or narrowing. She said that during the filing period in question, which ran from December 18, 1998, through March 18, 1999, she saw her treating doctor, Dr. N, once every 60 days, and was treated with medication. Asked to identify her current problems from her injury, her primary problem was depression, related to limitations on her ability to function and to lift. A carrier-requested functional capacity evaluation was done in October 1997 and found that claimant could work a full day at the sedentary level.

The claimant has had various jobs in the past that were short term, and she began to testify about them but was focused by the parties and hearing officer on the filing period. During that period, for the last five weeks, she had a part-time job distributing fliers. She had obtained this job through a lead sent to her by the carrier's vocational counselor. There were two weeks when she worked seven hours a week, one when she worked 14 hours, and two weeks when she worked 21 hours. This employment began February 13, 1999.

Claimant testified to numerous job contacts she had made, either following up on leads from the vocational counselor or through her own efforts. Her notes in evidence indicated that many jobs forwarded by the counselor were no longer open when she contacted them. Claimant said she had contacted other temporary services but they declined to hire her, stating that it had been too long since she had worked. She said that she continued to search for employment even during the period she was employed. Claimant was asked why businesses that she listed on her Statement of Employment Status (TWCC-52), located essentially along the same street and next door or across the street from each other, were listed as having been contacted on different dates. The claimant appeared not to understand the question and could not explain. She did assert that the dates listed would have been the dates she made contact with the listed prospective employer. When asked again, claimant interpreted the question as though it was asking why there were numerous contacts on the same date, because she emphatically testified by way of explanation that her access to transportation was limited and she would have to take the bus or rely on rides from friends in order to make her search. The claimant said she had three interviews during the filing period from her applications and contacts. The claimant had graduated from high school. The claimant said that her TWCC-52 did not list the employers she had contacted as a result of following up on the vocational counselor's job leads.

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). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, 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). The carrier made the point during the CCH that businesses located next to each other were alleged to have been contacted on different days; this was never clearly answered by the claimant. We must frankly observe that the evidence does not point to the dates listed as being accurate dates of contact, especially in light of the claimant's emphatic testimony that her access to transportation was limited. It would seem more likely than not that several businesses located near each other were contacted on the same day. The hearing officer could disbelieve the accuracy of the dates but nevertheless believe that the employers listed had been contacted or inquiries had been made. The hearing officer could certainly consider that good faith is indicated when a job is sought, offered, and accepted as was the case here. *See* Texas Workers' Compensation Commission Appeal No. 971349, decided August 25, 1997.

In reviewing the record, we cannot agree that the great weight and preponderance of the evidence is against the hearing officer's decision, and we affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge