

APPEAL NO. 991708

This appeal arises 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 13, 1999. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBS) for the second compensable quarter. Appellant (carrier) appeals, challenging the hearing officer's good faith and direct result determinations. Claimant responds that the hearing officer's decision is supported by the evidence and that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant is entitled to SIBS for the second compensable quarter. Carrier contends that claimant did not act in good faith because she moved to a small town, she took a part-time job paying only \$6.00 per hour, she is able to perform higher-paying work as an insurance adjuster, and she is trying to avoid working as an adjuster.

The "old" SIBS rules apply to this case. Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the impairment income benefits (IIBS) period expires if the employee has: (1) an impairment rating (IR) of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBS; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. Although the claimant's good faith effort must, generally, span the filing period, the Appeals Panel has stated that a claimant's job search does not have to encompass a certain length of time. Texas Workers' Compensation Commission Appeal No. 961454, decided September 11, 1996; Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. There is no requirement that a claimant look for work every day of the filing period. Texas Workers' Compensation Commission Appeal No. 960818, decided June 3, 1996. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The parties stipulated that: (1) claimant sustained a compensable injury on _____; (2) claimant's IR was 15% or more; (3) claimant did not elect to commute her

IIBS; and (4) the second quarter was from April 15, 1999, to July 14, 1999. The filing period was from approximately January 15, 1999, to April 15, 1999.

Claimant testified that she was injured when she fell down some stairs at work on _____. Claimant subsequently underwent spinal fusion surgery. She said she lost her job as an insurance adjuster in (State A) because she missed too much work due to her injury. Claimant said she moved to a small town in (State B) near her relatives, where the cost of living is "cheaper." Claimant said she sought work during the filing period, making 29 job searches. She testified that she found a part-time job on March 25, 1999, working as a home health aide. Claimant said she continued to search for work after she obtained the part-time job. Claimant testified that she sought insurance-related work and that she is willing to drive to State A to work. Claimant said she does not think she is able to do the work of an insurance adjuster because of her restrictions regarding sitting and standing. Claimant said she still has pain from her injury and that she takes medications that cause drowsiness. A June 9, 1999, record from Dr. M states that claimant may do light-duty work and that her restrictions are permanent.

In this case, our review of the record does not indicate that the hearing officer's good faith determinations regarding the second compensable quarter are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Therefore, there is no basis for disturbing his decision on appeal. The hearing officer heard claimant's testimony about her job search, her continuing physical problems, the job that she obtained during the filing period, and her continuation of her job search after she found work. Carrier's assertions regarding claimant's good faith were for the hearing officer to consider in making his determinations. We perceive no error in the good faith determination. The hearing officer's direct result determination is also sufficiently supported by evidence that claimant sustained a serious injury with lasting effects and that, during the filing period, she could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 93559, decided August 20, 1993; Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge