

APPEAL NO. 991754

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 21, 1999. The single issue at the CCH was whether the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the 12th compensable quarter. The hearing officer determined that the claimant was entitled to SIBS for the 12th quarter and the appellant (carrier) has appealed, urging that the preponderance of the evidence does not support the hearing officer's findings that the claimant made a good faith job search and that his unemployment was a direct result of his impairment. The claimant responds, in essence, that there is sufficient evidence to support the decision of the hearing officer.

DECISION

Affirmed.

Initially, we note that our review of this case is not under the new SIBS rules (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)), wherein a different result could possibly be reached, since the SIBS quarter involved began on May 9, 1999. As we stated in Texas Workers' Compensation Commission Appeal No. 991634, decided September 14, 1999 (Unpublished), "the new SIBS rules apply to quarters beginning on or after May 15, 1999," because the qualifying period ends on the 14th day before the beginning date of the quarter under the new rule. See Texas Workers' Compensation Commission Appeal No. 991555, decided September 7, 1999. Here, the SIBS quarter in issue began on May 9, 1999, and there is no indication that the hearing officer evaluated the case under the more demanding standards of the new rule.

The claimant suffered a knee and ankle injury on _____; underwent surgery; reached maximum medical improvement; was assessed a 15% or greater impairment rating; apparently has not returned to work; and is now seeking 12th quarter SIBS for the period of May 9 to August 7, 1999. Medical records show that he is still under periodic doctor's care and that, although he may not be able to return to the work he was doing at the time of injury and has some work restrictions, he has an ability to work with modest restrictions. He is also on pain and swelling medication. He states that he has some 100 hours of college credit and that during the period since his injury he has taken some computer courses and has worked with the Texas Rehabilitation Commission. He generally states his typical day is to exercise his leg for an hour in the morning and afternoon, look for prospective jobs in the newspaper and on the computer net, send out some resumes, and work toward greater proficiency on his computer. Her states he played golf on one occasion. During the qualifying period, he testified, he submitted documentation for approximately 43 contacts with prospective employers by sending resumes. He stated he had three personal interviews and two telephonic interviews during the period.

Based on this evidence, the hearing officer found that the unemployment was a direct result of the impairment and that the claimant made a good faith effort to obtain employment commensurate with his ability to work. Not applying the new rule standards as stated and based on our standard of review that we reverse findings of a hearing officer only if his determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, we affirm. Lopez v. Hernandez, 595 S.W.2d 180, 183 (Tex. Civ. App.-Corpus Christi 1980, no writ). There is some probative evidence, given the nature of the injury and the continuing effects as shown in the medical evidence and the restrictions, to support the direct result finding. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. While the good faith job search appears somewhat minimal under the circumstances, and different inferences than those found by the hearing officer find support in the evidence, this is not a sound basis to discard the findings of the hearing officer and reverse his decision. Texas Workers' Compensation Commission Appeal No. 982968, decided January 27, 1999.

Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge