

APPEAL NO. 991764

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 28, 1999. With respect to the issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the 10th quarter of March 6 to June 4, 1999. In his appeal, the claimant argues that the hearing officer's determinations that he did not make a good faith job search in the filing period for the 10th quarter and that he is not entitled to 10th quarter SIBS are against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant's unemployment in the filing period for the 10th quarter was a direct result of his impairment.

DECISION

Affirmed.

At the outset we note that the new SIBS rules did not apply in this case because the compensable quarter began before May 15, 1999. Texas Workers' Compensation Commission Appeal No. 991634, decided September 14, 1999. The parties stipulated that the claimant sustained a compensable right wrist injury on _____; that he reached maximum medical improvement on December 15, 1995, with an impairment rating of 17%; that he did not commute his impairment income benefits; and that the 10th quarter of SIBS ran from March 6 to June 4, 1999, with a corresponding filing period of December 5, 1998, to March 5, 1999. The claimant testified that he is right-handed, that about half of his right hand is "dead," that he has no strength in his hand, and that he has constant pain. He stated that his condition has worsened since his last surgery in July 1998 in that he can hardly move his fingers. He further testified that his doctor has told him that the lack of mobility in his hand cannot be improved and may, in fact, get worse.

In December 1998, the claimant underwent a functional capacity evaluation which demonstrated that he could work in a sedentary capacity, with significant restrictions. A letter from the Texas Rehabilitation Commission states that the claimant has been an active client since May 9, 1996, and that he has been enrolled as a full-time student at College since August 1996. The claimant testified that he is pursuing an Associate's Degree in Accounting. He testified that he was not enrolled in school in the fall semester in 1998 because of his July 1998 surgery, but, that he started school again in January 1999. He stated that he had classes from 10:00 a.m. to 12:00 p.m. and from 1:30 p.m. to 3:00 p.m., Monday, Wednesday, and Friday, and that he was tutored from 3:00 p.m. to 5:00 p.m. on most of those days. He acknowledged that he did not have classes on Tuesday, Thursday, Saturday, Sunday, or in the evenings on Monday, Wednesday, or Friday. The claimant stated that in addition to attending school in the filing period, he applied for 11 bookkeeping positions, explaining that he applied for the positions for which he is retraining. He testified that he looked for work in (city 1), Texas, which is approximately 30 miles from the town where he lives. He stated that he did not look for work where he lived because there were

no jobs within his restrictions available in the small town with a population of about 1,800. On cross-examination, the claimant testified that he went to more than 11 employers in the filing period but they were not hiring and that the 11 represented the employers who were hiring and where he completed an application.

The hearing officer determined that the claimant did not make a good faith effort to look for work in the filing period for the 10th quarter. That question presented a question of fact for the hearing officer to resolve. It was the hearing officer's responsibility, as the sole judge of the evidence under Section 410.165(a), to consider the evidence and to determine if the claimant sustained his burden of proving good faith. After reviewing the testimony and evidence, the hearing officer simply was not persuaded that the claimant made a good faith search for employment in the filing period. Our review of the record does not reveal that that determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse it, or the determination that the claimant is not entitled to SIBS for the 10th quarter, on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The fact that another fact finder could have drawn different inferences from the evidence, which would have supported a different result, does not provide a basis for us to reverse the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge