

APPEAL NO. 991783

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 14, 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 13th compensable quarter. The claimant appeals the hearing officer's findings that she made 18 job contacts during the qualifying period from a total of six different employers, and that she did not attempt in good faith to find employment commensurate with her ability to work. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant's impairment rating is 15%, that the claimant did not elect to commute any portion of her impairment income benefits, and that the claimant's 13th compensable quarter was May 4, 1999, through August 2, 1999. Not appealed is the hearing officer's findings that the claimant injured her left shoulder and neck while lifting heavy sacks of sugar on _____; that the claimant had the ability to perform light-duty work at all times during the filing period; that the claimant had previously contacted the Texas Workforce Commission but her file was inactive during the filing period; and that the claimant's unemployment during the filing period is a direct result of her impairment. The claimant testified that she has work restrictions which include no lifting over 10 pounds, no pulling, and no twisting. The claimant had left shoulder surgery in 1996 and stated that she continues to have pain in her left shoulder and neck. The claimant received physical therapy during the filing period, until March 8, 1999.

The claimant testified that she sought employment during the filing period for the 13th quarter and all of her job contacts are documented on her Statement of Employment Status (TWCC-52). The TWCC-52 reflects that the claimant made 20 contacts with six different employers, but all were not hiring. The claimant submitted statements from many of the employers listed on the TWCC-52, confirming that she sought a job with them. The claimant testified that she returned to the same employers that were not hiring because sometimes she was told to check back with them. The claimant said that she did not apply for jobs in (City 1), approximately a 45-minute drive from her home, because she has difficulty driving because she cannot turn her neck. It was the claimant's position that she made a good faith effort to obtain employment, given the fact that she lives in (City 2), a small farming community where opportunities are limited.

The carrier asserts that two of the claimant's alleged 20 job contacts could not be verified, and submitted evidence in support thereof. The carrier argues that there are other employers in City 2 that the claimant could have contacted for potential employment, but that she restricted her job search to recontacting all of the places where she had previously

inquired about employment. The carrier states that the claimant is not restricted from driving and could have sought employment in City 1 and that there is no reason that the claimant could not apply with every business in City 2.

Section 408.143 provides that an employee continues to be entitled to SIBS after the first compensable quarter if the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has made a good faith effort to obtain employment commensurate with his or her ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)), the quarterly entitlement to SIBS is determined prospectively and depends on whether the employee meets the criteria during the prior quarter or "filing period." Under Rule 130.101, "[f]iling period" is defined as "[a] period of at least 90 days during which the employee's actual and offered wages, if any, are reviewed to determine entitlement to, and amount of, [SIBS]." The employee has the burden of proving entitlement to SIBS for any quarter claimed. Texas Workers' Compensation Commission Appeal No. 941490, decided December 19, 1994. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. Good faith is not established simply by some minimum number of job contacts, but a hearing officer may consider "the manner in which the job search is undertaken with respect to timing, forethought and diligence." Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The hearing officer determined that the claimant made 18 job contacts with six different employers during the filing period. While the claimant asserted that she made a good faith effort to obtain employment commensurate with her ability to work during the filing period, the hearing officer did not find the claimant's testimony persuasive. The claimant's appeal states that she sought employment at 20 places, that the carrier has accused her of forgery, and that the carrier should prove its allegations. The record does not reflect that the carrier accused the claimant of forgery, rather the carrier asserted that two of the job contacts listed on the claimant's TWCC-52 could not be verified. Whether the claimant sought employment with 20 employers or 18 employers presented a question of fact for the hearing officer to resolve. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the hearing officer's determination that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work and that the claimant is not entitled to SIBS for the 13th quarter.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge