

## APPEAL NO. 991828

This appeal is brought 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 27, 1999. The appellant (claimant) and the respondent (self-insured) stipulated that the fourth quarter for supplemental income benefits (SIBS) began on April 11, 1999, and ended on July 10, 1999. The hearing officer determined that the claimant listed 29 job contacts on the application for SIBS for the fourth quarter, that she had the ability to return to the job in which she was injured, that her inability to obtain employment was not a direct result of her impairment from the compensable injury, that during the filing period she did not in good faith seek employment commensurate with her ability to work, and that she is not entitled to SIBS for the fourth quarter. The claimant appealed, stated why she thought that the determinations that during the filing period her unemployment was not a direct result of her impairment from the compensable injury and that she did not in good faith seek employment commensurate with her ability work are wrong, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she is entitled to SIBS for the fourth quarter. The self-insured responded, urged that the evidence is sufficient to support the appealed determinations of the hearing officer, cited Appeals Panel decisions, and requested that the decision of the hearing officer be affirmed.

### DECISION

We affirm.

The application for SIBS for the fourth quarter states that the claimant sought work with 29 prospective employers on five days during the filing period. The application indicates that on February 24, 1999, the claimant sought employment with 21 employers. The claimant testified that all of her job contacts during the filing period were listed on the form. A report from a private investigator indicates that three of the employers contacted by the claimant were hiring at the time she contacted them, that she did not follow up to obtain work with those employers, and that some employers thought she was interested in building a record to keep disability benefits. In a report dated May 3, 1999, the claimant's treating doctor stated that he had not seen her for over a year, that she needs to go back to her regular job as a security officer, and that she does have some restrictions that would prevent her from performing certain activities. The claimant testified that she contacted a retail clothing store in about the middle of May 1999 and began working part time in that store Memorial Day weekend.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5,

1993. An appeals level body is not a fact finder and it 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). The hearing officer's determinations that during the filing period for the fourth quarter the claimant did not in good faith seek employment commensurate with her ability to work and that her unemployment was not a direct result of her impairment from the compensable injury and that she is not entitled to SIBS for the fourth quarter are so not against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Thomas A. Knapp  
Appeals Judge