

## APPEAL NO. 991849

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 27, 1999. He (hearing officer) determined that, regarding the ninth, 10th, and 11th quarters, the appellant (claimant) did not meet the good faith job search requirement and that he is not entitled to supplemental income benefits (SIBS) for those quarters. The hearing officer also determined that, since it had been previously determined that claimant also was not entitled to SIBS for the eighth quarter, he has not been entitled to SIBS for twelve consecutive months and has permanently lost entitlement to SIBS. Claimant appeals, contending that the hearing officer erred in making his determinations. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order. The hearing officer made direct result determinations in claimant's favor for all three quarters in question, which were not appealed.

### DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that he is not entitled to SIBS for the ninth and 10th quarters. He contends that he met his burden regarding the good faith criterion because he was in school full time during the ninth quarter filing period; his doctor said he was unable to work during the filing period for the ninth quarter; he was attempting to retrain so that he would be able to do a sedentary job; and the Texas Rehabilitation Commission had helped him enroll in school to be retrained.

We first note that the "old" SIBS rules apply to this case. The parties stipulated that: (1) claimant had an impairment rating (IR) of 15% or greater; (2) claimant did not commute any of his impairment income benefits (IIBS); (3) the ninth quarter was from July 31, 1998, to October 29, 1998; and (4) the 10th quarter was from October 30, 1998, to January 28, 1999.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the IIBS period expires if the employee has: (1) an 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. 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 are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has 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 hearing officer determined that claimant did not make a good faith effort to search for employment during the filing periods for the ninth and 10th quarters. Claimant testified that he was not in school 40 hours per week during the filing periods in question and that he was not in school the first month of the ninth quarter filing period. Claimant said that he sustained a compensable back injury in 1994 while working as an electrician's helper; that he had surgery in 1994; that he did not search for work during the filing periods for the ninth and 10th quarters; and that his doctor had not released him to return to work. In a September 21, 1998, off-work slip, Dr. E stated that claimant had undergone spinal surgery and that "he is still unable to return to the workforce." In an October 15, 1998, letter, written toward the end of the filing period for the 10th quarter, Dr. E stated that claimant is a candidate for vocational rehabilitation, that he cannot do work involving walking, bending, or lifting, and that he is a candidate for sedentary work. The hearing officer determined that claimant was able to perform part-time, sedentary work during these two filing periods, that he did not search for work, that he was not in school full time, and that he did not meet the good faith SIBS requirement. Our review of the record does not indicate that the hearing officer's good faith determinations regarding these two quarters 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.

Claimant contends the hearing officer erred in determining that he is not entitled to SIBS for the 11th quarter. Claimant asserts that he was in school full time during the filing period for the 11th quarter and that he made 20 job searches as well. The parties stipulated that the 11th quarter was from January 29, 1999, to April 29, 1999. Claimant testified that he was in school less than 40 hours per week and that his classes ended about one month before the filing period ended. Claimant began his job search on December 22, 1998; the filing period began on October 30, 1998. The hearing officer determined that claimant was not in school full time and that he did not make a good faith effort to search for employment during the filing period for the 11th quarter. The hearing officer found that claimant sought work with 21 employers on 10 days during the filing period for this quarter, but that he did not make a consistent effort to find work. The hearing officer also determined that claimant was able to perform part-time, sedentary work during this filing period. From this evidence, the hearing officer could and did determine that this retraining and job search activity did not adequately establish claimant's good faith. Our review of the record does not indicate that the hearing officer's good faith determination regarding the 11th quarter is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Claimant contends that the hearing officer erred in determining that he permanently lost entitlement to SIBS. He complains that the hearing officer determined that "at the conclusion of the [11th] quarter, claimant had not been entitled to SIBS for [12] consecutive months." Claimant asserts that this could not have been determined until the hearing officer's decision in this case. We have reviewed the record and we conclude that the hearing officer did not err in making this determination.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge