

APPEAL NO. 991859

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 August 5, 1999. She (hearing officer) determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 18th quarter. The claimant appeals this determination, expressing her disagreement with it. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

This case is determined under the so-called "new" SIBS rules.

The claimant sustained a compensable neck, right arm, and right shoulder injury on _____. She reached maximum medical improvement on February 15, 1994, and was assigned a 16% impairment rating.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBS after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.101(4) (Rule 130.101(4)), the quarterly entitlement to SIBS is determined prospectively and depends on whether the employee meets the criteria during the "qualifying period." The 18th quarter was from May 28 through August 26, 1999, and the qualifying period for this quarter was from February 12 through May 2, 1999. The claimant had the burden of proving entitlement to SIBS for the quarter claimed.

At issue in this case is whether the claimant made the required good faith job search. She submitted a Statement of Employment Status (TWCC-52) in which she listed some 43 job contacts. She said she found some of the contacts through the assistance of the carrier and the rest she found in the newspaper. She obtained no job interviews and was not offered any jobs as a result of this effort. She said she did not register with the Texas Workforce Commission or the Texas Rehabilitation Commission. Rule 130.102(e) provides that an employee "shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." The hearing officer commented, based on the TWCC-52, that the claimant did not seek employment from February 12 to February 27, 1999. The claimant, through her attorney, represented that she did look for work on February 16, 1999, but that there was a 10-day period in which she did not look for work. This question was apparently premised on his further assertion that some of her job search efforts for the 18th quarter were actually reflected in her TWCC-52 for the 17th quarter. This document, however, was not offered into evidence by the claimant. In any event, the concession that there was a 10-day period

in which no job search efforts were made can be construed as non-compliance with Rule 130.102(e).

The hearing officer considered the evidence and found that the claimant did not make the required good faith job search. In her appeal of this determination, the claimant argues that the hearing officer simply applied some minimum number of job contacts as the basis for her finding of no good faith job search. While the number of job searches made is relevant to the good faith job search, we agree that numbers in themselves do not generally resolve the issue one way or another. Based on our review of the record, we are unwilling to conclude that the hearing officer has improperly applied some such rule of thumb in reaching her decision in this case. The claimant also argues on appeal that the hearing officer did not take into account the number of contacts and applications made, which, the appeal said, was "approximately 60." It is unclear where this number is derived from and is not readily apparent from the evidence.

Whether the claimant made the required good faith job search was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. She considered the actual number of job contacts as well as the limited transportation available to the claimant and other matters submitted on the claimant's behalf and concluded that she did not establish the required good faith job search. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's finding that the claimant did not make the required good faith job search. Not having done so, she was not entitled to SIBS for the 18th quarter.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge