

APPEAL NO. 991861

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. 401.001 *et seq.* (1989 Act). On July 21, 1999, a hearing was held. She (hearing officer) determined that appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 14th and 15th compensable quarters. Claimant asserts that she attempted in good faith to find work in the filing period of the 14th quarter, stating that she attended computer classes "during the 14th quarter filing period" for four days a week, "five to six" hours a day and argues that she did not have time to look for work while enrolled in a "full-time program"; claimant also argues, in regard to the filing period for the 15th quarter, that she attended medical assistant school beginning in March 1999 and states that having taken this course, she was able to get a job on July 14, 1999 (during the last month of the filing period for the 16th quarter). Claimant also states that respondent (carrier) did not show that it sent claimant a form to fill out for SIBS in attacking the determination that claimant did not timely file the "15th and 16th" SIBS forms. Carrier replied that the decision should be affirmed.

DECISION

We affirm.

The only quarters in issue at this hearing were the 14th and 15th. We consider claimant's argument on appeal as to late filing to be directed to the 14th and 15th quarters, not the 15th and 16th. The assertion made was that the carrier did not show that it sent a form for application for SIBS. However, the record shows that claimant was denied SIBS for the 12th and 13th quarters; as such, carrier was not required to send a form for the next succeeding quarter since SIBS has not been paid for those quarters. See Texas Workers' Compensation Commission Appeal No. 980143, decided March 11, 1998, which said that the carrier is not required to continue to send Statement of Employment Status (TWCC-52) forms to the claimant until entitlement is reinstated. We note that had claimant been entitled to SIBS for the 14th quarter, it was only from January 21 through January 31, 1999, that carrier was relieved of liability to pay; had claimant been entitled to SIBS for the 15th quarter, it was only from April 22 through April 25, 1999, that carrier was relieved of liability. See Section 408.143(c).

Claimant testified that she hurt her back working on _____. The parties stipulated that the injury was compensable; that claimant has an impairment rating of 15% or more; that no benefits have been commuted; that the filing period for the 14th quarter began on "October 10, 1998" (sic); that the filing period for the 15th quarter was from January 21, 1999, through April 21, 1999; that carrier received claimant's applications for SIBS on February 1, 1999, and April 26, 1999; and that claimant was not entitled to SIBS for the 12th and 13th quarters.

Claimant provided evidence of job searches conducted in the period of January 4, 1999, to January 20, 1999. (The filing period for the 14th quarter did not begin on October

10, 1998, as said to have been stipulated, but on October 22, 1998—see Finding of Fact No. 10 which states that the 13th quarter began on October 22, 1998.) While claimant's appeal said that she was enrolled in a "full-time" computer class, she testified that that course ended on November 18, 1998. There were no job contacts listed from November 18, 1998, to January 3, 1999, and the testimony indicates that claimant was enrolled for "four to six" hours a day, for four days a week only from October 22 to November 18, 1998, during the filing period in question. Claimant testified that between January 4 and January 20, 1999, she contacted the employers listed on her TWCC-52. These appear to total 18 to 20 employers. Claimant also said that she looked for a job every Friday (she went to computer class Monday through Thursday) but also said that she wrote down every place she went. She indicated confusion when asked about whether any searches were made in November and December 1998.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. In this case, we do not consider claimant to have been enrolled in a training class full time, not just because of the limited hours expended per week, but because the course ended less than one-third of the way through the filing period. Good faith is a factual matter for the hearing officer to determine. With no specific evidence relating to any employers contacted during November and December, the hearing officer could reasonably conclude that claimant's flurry of contacts in January 1999 did not constitute good faith. The Appeals Panel is not a fact finder and will only overturn a factual decision when it is against the great weight and preponderance of the evidence. In this case, the evidence is sufficient to support the hearing officer's determination that claimant is not entitled to SIBS for the 14th quarter.

Claimant stated that she conducted no job searches for the 15th quarter. There was no evidence that her condition deteriorated so that she was unable to do any work at all during the filing period for the 15th quarter. On the contrary, claimant's position was that she was enrolled in a medical assistant class during the filing period (which began January 21, 1999, and ended April 21, 1999) and that she thereafter obtained a job beginning on July 14, 1999. The record shows, however, that claimant began classes on March 3, 1999, 40 days after the filing period began. While the hearing officer found that claimant's classes were from 8:30 a.m. to 12:30 p.m. and from 6:00 p.m. to 10:00 p.m., she also found that they did not begin until March 3, 1999. (The evidence shows that claimant was enrolled in three specific classes in the course, one from 8:15 a.m. to 9:30 a.m.; another from 9:35 a.m. to 10:50 a.m.; and the last from 10:55 a.m. to 12:10 p.m.; while a more general document states that classes are "from 8:30 a.m. to 12:30 p.m. and 6:00 p.m. to 10:00 p.m.") Notwithstanding that the hearing officer found daily attendance to be eight hours, the lengthy period (40 days) of non-enrollment in the filing period for the 15th quarter, together with no job contacts for even part-time work, provide sufficient support for the determination that claimant did not attempt in good faith to find work during the filing period of the 15th quarter. While claimant was said to have obtained a job in July, that occurred after the filing period in question and does not compel that the hearing officer must find a good faith attempt in the filing period for the 15th quarter.

The findings of fact and conclusions of law are sufficiently supported by the evidence. The decision and order are sufficiently supported by the evidence, findings of fact, and conclusions of law and are affirmed. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge