

APPEAL NO. 991977

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 19, 1999, a hearing was held. She (the hearing officer) closed the record on August 9, 1999, and determined that appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the sixth and seventh compensable quarters. Claimant takes issue with findings of fact that said she could work full time at a medium level during the filing periods of both quarters, adding that she cared for grandchildren during both time periods which constitutes good faith. She believes that she met the direct result test for both quarters. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_, when she slipped and fell at work injuring her left knee and right shoulder. The parties stipulated that claimant had a compensable injury, that her impairment rating is 15% or more, that the sixth quarter began January 9, 1999, and that the seventh quarter began April 10, 1999. (The hearing officer in her Statement of Evidence referred to a stipulation that claimant had commuted no benefits, but did not include such a stipulation in her listed stipulations set forth in Finding of Fact No. 1.) The respective filing periods began on, approximately, October 10, 1998, and January 9, 1999.

Claimant testified that she went to a typing and keyboarding computer class from August to December 1998. She added that she was at the school from 7:30 a.m. to noon (apparently five days a week) but stated that part of this time was spent studying at school and not all of it was in class. She sent resumes to various employers during the period of December 4, 1998, to January 5, 1999. She also indicated that she had two interviews but received no job offer. The hearing officer made no reference to the number of employers receiving the resumes, but the claimant's Statement of Employment Status (TWCC-52) appears to list approximately 28. The hearing officer did note that claimant baby-sat either one or more of her grandchildren during both filing periods in issue.

Claimant testified that she did baby-sit during the filing period of the seventh quarter but did not testify or provide any other evidence of any other job search during that time period.

While claimant does not state on appeal that she had no ability to do any work during either filing period in question, she did testify at the hearing that she was very limited in her ability to work. Dr. F, her current treating doctor, said on March 19, 1999, that he

had been her treating doctor about one month; he stated that in his opinion claimant could perform sedentary work four hours a day.

The carrier provided medical opinions from Dr. N dated October 29, 1998, and April 21, 1999. In the 1998 opinion, Dr. N referred to a functional capacity evaluation (FCE) of November 3, 1998, which showed that claimant could do medium level work; in the 1999 opinion Dr. N stated that claimant can work eight hours a day and imposed the same restrictions as found in the FCE. In addition, an October 1, 1997, report from Dr. R, claimant's then treating doctor, said, "there is no reason medically that she could not work full days" at light duty.

Claimant attached another medical document to her appeal that indicates she should only work for four hours a day. However, that document is dated April 21, 1998, so it was in being at the time of the hearing; it was not offered at the hearing so will not be considered for the first time now on appeal.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The hearing officer considered claimant's work in her home baby-sitting her grandchildren for up to 30 hours a week plus the resumes she sent during the filing period of the sixth quarter and concluded that this did not show that an attempt was made in good faith to find employment. Similarly, the hearing officer considered the baby-sitting of grandchildren in her own home and no other job search in the filing period of the seventh quarter and concluded that those efforts did not show an attempt in good faith to find employment. These findings of fact are sufficiently supported by the evidence and allow the decision that no SIBS are due for the sixth and seventh quarters to be affirmed.

In regard to findings of fact that claimant did not meet the direct result test, there was evidence of restrictions in place upon claimant during both filing periods. Under the guidance found in Texas Workers' Compensation Commission Appeal No. 982993, decided February 5, 1999, and the absence of any clear statement of what type of position claimant held at the time of the injury, the determinations of no direct result are reversed.

Finding that the conclusions of law and the decision and order provided at the end of the hearing officer's opinion are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge