

APPEAL NO. 000218

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 January 6, 2000. The hearing officer determined that the respondent (claimant) made a good faith effort to obtain employment; and is entitled to supplemental income benefits (SIBS) for the eighth quarter. The appellant self-insured ("carrier" herein) appeals, stating that the evidence does not support the hearing officer's determination that the claimant is entitled to eighth quarter SIBS. Carrier also contends that the hearing officer prejudged the case and discounted carrier's evidence. The claimant responds that the overwhelming weight of the evidence supports the decision of the hearing officer and requests the decision be affirmed.

DECISION

We affirm.

Carrier contends the hearing officer prejudged the case and discounted carrier's evidence. We have reviewed the record and we cannot conclude that the hearing officer acted from bias or prejudice, or that he did not properly apply the law in reaching the decision he did. The hearing officer stated that he would listen to the evidence carefully and that he would read carrier's cited cases. In fact, after reviewing the evidence, the hearing officer ended up stating in the decision and order that "carrier raised some compelling concerns." We find no merit in this portion of carrier's appeal.

Carrier appeals the hearing officer's determination that claimant made a good faith effort to seek work commensurate with her ability to work. Carrier complains that: (1) claimant did not provide applications or statements from employers to document her job search; (2) carrier's investigator could not confirm any of claimant's contacts except one; (3) claimant did not act in good faith because she did not actually fill out an application with all employers contacted; (4) claimant made some of her contacts by telephone; and (5) claimant did not work with the Texas Workforce Commission or Texas Rehabilitation Commission to obtain a job.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBS when the impairment income benefits (IIBS) period expires if the employee has: (1) an impairment rating (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.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) provides, in pertinent part:

Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

* * * * *

- (4) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

Subsection (e) provides, in pertinent part:

Job Search Efforts and Evaluation of Good Faith Effort. Except as provided in subsections (d)(1),(2), and (3) of this section, an injured employee who has not returned to work and is able to return to work in any capacity 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 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 is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been 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.

Claimant testified that she injured her low back at work and that she has right leg pain due to that injury. She said she has severe foot drop, that she sometimes drags her foot, that she cannot sit or stand for very long without changing positions, and that she is unable to do certain housework chores, such as making the bed. Claimant testified that she looked for work with about 39 potential employers during the filing period, but that she was not hired. Claimant testified that she looked for work by dropping in on employers, looking in the newspaper, and contacting employers that friends said were hiring. She said she tried to make two to four job contacts per week and that the job contacts listed on her Application for [SIBS] (TWCC-52) are accurate. A November 1997 functional capacity evaluation report stated that treatment to date included a laminectomy at L5-S1 and epidural steroid injections, and that claimant is able to do modified sedentary work. Medical records from Dr. B stated that claimant is having lower back pain and radicular pain and that she underwent trigger point injections in September 1999.

The parties stipulated that: (1) claimant sustained a compensable injury to her low back on August 8, 1994; (2) claimant's IR is 26%; and (3) claimant did not elect to commute

her IIBS. It was undisputed that claimant was unemployed during the filing period. The filing period for the eighth quarter was from July 30, 1999, to October 28, 1999.

Claimant contended at the CCH that she would try to work if an employer offered her a job. The hearing officer heard claimant's testimony about her job search plan, her contacts with employers, and her health problems. There is evidence that claimant adequately documented her job search on her TWCC-52 and that she made job contacts every week of the filing period. The facts emphasized by carrier were factors for the hearing officer to consider in making his determinations in this case. We conclude that the hearing officer's good faith determination regarding the eighth quarter is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge