

APPEAL NO. 000274

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 26, 2000. The issue at the CCH was whether the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the 11th compensable quarter, October 26, 1999, through January 24, 2000. The hearing officer determined that the claimant is entitled to SIBS for the 11th quarter. The appellant (carrier) appeals, contending that the claimant did not make a good faith effort to seek employment commensurate with her ability to work and was not entitled to SIBS for the 11th quarter. The claimant responds that there is sufficient evidence to support the hearing officer's decision and urges affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury to her thoracic spine, wrists, and shoulder on _____, when she attempted to prevent a client/patient from falling. She reached maximum medical improvement on March 6, 1996, and was assessed a 20% impairment rating. She claims she is still suffering the effects of her injuries and has lifting restrictions. She has not worked but claims she made a good faith effort to obtain employment commensurate with her ability to work. She acknowledged that she has four years of college credit and years of work experience, which includes substitute teaching, and that she had completed a medical assistant course of retraining under the Texas Rehabilitation Commission. During the qualifying period, July 14 through October 12, 1999, she was in the (islands) because of a family situation and states that she attempted to obtain employment while there. She testified and submitted some documentation for approximately 40 prospective jobs, having sought employment at least once every week during the filing period. She stated that she personally applied at some places, sent resumes to others, made phone calls, and followed up with about half of the prospective employers. She states that her age worked against her in the (islands) and that some prospective employers wanted the person hired to be licensed, which she was not.

While it certainly appears unusual that a person with the claimant's education, training, and experience remains unemployed, the hearing officer was nonetheless satisfied that an attempt in good faith to obtain employment commensurate with the ability to work was shown. In this regard, to establish a good faith job search, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) provides generally that a claimant should look for employment and document the search "every week of the qualifying period" and list various factors that should and can be taken into consideration in determining good faith. In this case, the most that can be said is that the claimant minimally met the job search requirements set forth in the rule and that she did provide some documentation of a

job search during each week of the qualifying period. However, whether or not good faith is proven is essentially a factual issue for the hearing officer to resolve from the evidence of record. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. While a different inference could reasonably find support in the evidence, that is not a sound basis to reverse the factual findings of the hearing officer on the issue of a good faith job search. Texas Workers' Compensation Commission Appeal No. 992836, decided February 1, 2000; Texas Workers' Compensation Commission Appeal No. 992442, decided December 17, 1999 (Unpublished). Only were we to conclude from our review of the evidence that there was no evidence to support the determinations or that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sufficient basis to reverse her factual findings. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. We do not find either situation to be the case here and, accordingly, affirm the hearing officer's decision and order.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge