

APPEAL NO. 000366

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 992747, decided January 21, 2000. No further hearing was held on remand. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the fourth compensable quarter. In its appeal, the appellant (self-insured) argues the hearing officer "erred in finding the claimant attempted in good faith to obtain employment commensurate with her ability" and in his conclusion that the claimant is entitled to SIBS for the fourth quarter. The hearing officer's direct result determination became final pursuant to Section 410.169 because it was not appealed in the first appeal that resulted in the remand. The appeals file does not contain a response to the self-insured's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, in the course and scope of her employment as a bus driver with the self-insured school district. The parties stipulated that the claimant reached maximum medical improvement on December 5, 1997, with an impairment rating of 17%; that she did not commute her impairment income benefits; that the fourth quarter of SIBS ran from August 28 to November 26, 1999; that the qualifying period for the fourth quarter ran from May 16 to August 15, 1999; and that during the qualifying period, the claimant did not earn wages that were 80% of her average weekly wage. The claimant's entitlement to fourth quarter SIBS is to be determined in accordance with the "new" SIBS rules. Texas Workers' Compensation Commission Appeal No. 991555, decided September 7, 1999.

The claimant testified that she is 49 years old and that at the time of her compensable injury, she was working as a school bus driver for the self-insured and as a licensed vocational nurse (LVN) with another employer. The claimant testified that she looked for work in each week of the qualifying period. Her job search efforts are reflected on the claimant's Application for Supplemental Income Benefits (TWCC-52). The claimant testified that she received some of her job leads from the newspaper and some from word-of-mouth. In addition, she stated that she attended job fairs; that she was registered with the Texas Workforce Commission during the qualifying period and she went to their offices regularly to look for job leads; that she contacted the Texas Rehabilitation Commission (TRC) on a regular basis during the qualifying period and participated in a vocational rehabilitation program sponsored by the TRC one hour per day during the qualifying period; and that she went to the "job club" at (GI) whenever she could during the qualifying period. The claimant also testified that in October 1999, she began working as a substitute teacher with the self-insured but that her wages in that position are much lower than the wages she received as a bus driver. On cross-examination, the claimant acknowledged that her "number one focus" is to stay with the self-insured because of her accrued retirement

benefits and other benefits she has with the self-insured. However, she also testified that she would take a job with another employer if it was offered, while still pursuing all of the potential employment opportunities with the self-insured. In addition, she admitted that she had been offered a job as a secretary at one of the self-insured's middle schools in the qualifying period but that she did not get the job because she was not able to pass the typing test required for the position.

The hearing officer determined that the claimant made a good faith effort to look for work commensurate with her ability to work in the qualifying period for the fourth quarter of SIBS. The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) applicable in this case provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "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) of Rule 130.102 provides, in relevant part, that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for work every week of the qualifying period and document his or her job search efforts." Rule 130.102(e) also includes a non-exhaustive list of factors to be considered in determining whether the injured employee has made a good faith job search.

The issue of whether the claimant made a good faith job search in the qualifying period for the fourth quarter was a question of fact for the hearing officer to resolve. 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 are conflicts and inconsistencies in the evidence, the hearing officer resolves those conflicts and inconsistencies and determines what facts the evidence has 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 overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. In arguing that the hearing officer's good faith determination is against the great weight of the evidence, the self-insured emphasized that the claimant primarily focused her efforts toward obtaining a job with the self-insured and that there was evidence indicating that the claimant "was not compliant with the employment services at (GI)." The self-insured emphasized the same factors at the hearing and it was a matter for the hearing officer to determine the significance, or lack thereof, of those factors to his resolution of the good faith issue. As the hearing officer noted, the evidence in the record demonstrates that the claimant sought employment each week during the qualifying period, that she documented those efforts, and that she participated in part-time vocational rehabilitation with the TRC. The hearing officer was persuaded that when those efforts are considered as a whole they demonstrate that the claimant made a good faith effort to look for work in the qualifying period. Nothing in our review of the record demonstrates that that determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's good faith determination, or the determination that the claimant is entitled to SIBS for the fourth quarter, on appeal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney  
Appeals Judge

CONCUR:

Joe Sebesta  
Appeals Judge

Robert W. Potts  
Appeals Judge