APPEAL NO. 000457

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 8, 2000. The appellant (claimant) and the respondent (carrier) stipulated that the claimant has a 15% impairment rating; that his restrictions are that he must alternate sitting and standing, not lift over 20 pounds, and avoid repetitive lifting, bending, and stooping; that the qualifying period for the 12th quarter for supplemental income benefits (SIBS) began on June 23, 1999, and ended on September 21, 1999; and that the qualifying period for the 13th quarter began on September 22, 1999, and ended on December 21, 1999. The hearing officer determined that during those qualifying periods the claimant's unemployment was a direct result of the impairment from the compensable injury. Those determinations have not been appealed and have become final. The hearing officer also determined that during the qualifying periods the claimant did not look for employment each week, that the claimant's job search was designed to produce job contacts and not a job, that he did not in good faith seek employment commensurate with his ability, and that the claimant is not entitled to SIBS for the 12th and 13th quarters. The claimant appealed, urged that the hearing officer erred in making determinations against him, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to SIBS for the 12th and 13th quarters. The carrier responded, urged that the appealed determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

An Application for Supplemental Income Benefits (TWCC-52) for the 12th quarter lists 51 job contacts made by the claimant. Those listed include single contacts on September 23, 24, and 27 and three contacts on September 28, 1999. Those six contacts are outside the qualifying period for the 12th quarter. The TWCC-52 for the 13th quarter lists 69 job contacts. They include two contacts on September 23, 24, and 27 and three contacts on September 28, 1999. Six of the contacts are listed on the TWCC-52 for the 12th quarter. There is an additional entry for September 23, 24, and 27, 1999. Two of the entries are after the close of the qualifying period. The entries indicate that a contact was made during each week of each qualifying period. A company working for the carrier provided lists of prospective employers with suggested dates by which the claimant should contact the potential employers. The TWCC-52s indicate that the claimant contacted the prospective employers, but after the suggested dates for contacting them. The carrier introduced documents indicating that they were able to verify that the claimant had contacted about one-half of the employers listed on the TWCC-52s.

The claimant testified that he looked for work every week of both qualifying periods; that he does not have a car and used a public transportation bus to go to prospective

employers; that he applied at restaurants because he has that type of experience; that he looked in newspapers; that he went to places because he thought that they might be hiring; that on the days he received lists of employers provided by a company working for the carrier, he went to the employers on the lists; that he thinks that he could perform the work of the jobs that he applied for; and that he knows that some of the jobs required lifting, but he thought that the employers would modify the jobs to meet his restrictions. He said that he put the information about job contacts on paper; that at the end of the qualifying period, he put the information on the TWCC-52; that he disposed of the other papers so he would not accumulate so many papers; and that sometimes on the TWCC-52 the names of places he went to are in alphabetical order, but he did not get the names out of the telephone book and place them on the TWCC-52. The claimant stated that as the result of his efforts during the two qualifying periods, he had interviews with two fast food places and one large retail store. He testified that he did not get a job.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. Whether good faith was shown is usually a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995. In Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, the Appeals Panel rejected the contention that a certain number of job applications showed good faith and stated in common usage good faith is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation. In Texas Workers' Compensation Commission Appeal No. 960252, decided March 20, 1996, the Appeals Panel stated that the trier of fact, in determining whether the claimant in good faith sought employment commensurate with the ability to work, sometimes assesses whether undeniable contacts made with prospective employers constitute a true search to reenter employment or are done instead in a spirit of meeting, on paper, eligibility requirements for SIBS. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). It is obvious that the hearing officer applied the SIBS rules effective January 31, 1999, to the evidence before him. The hearing officer's findings concerning good faith effort by the claimant to obtain employment commensurate with his ability to work during the qualifying periods and the conclusions that the claimant is not entitled to SIBS for the 12th and 13th quarters are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge