

APPEAL NO. 000547

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 February 11, 2000. The issue at the CCH was whether the appellant (claimant) was entitled to supplemental income benefits (SIBs) for the eighth quarter, from November 17, 1999, through February 15, 2000. The hearing officer found that during the qualifying period for that quarter the claimant did not in good faith seek employment commensurate with his ability to work and that his unemployment was not a direct result of the impairment from the compensable injury and concluded that the claimant is not entitled to SIBs for the eighth quarter. The claimant appeals, requesting that the Appeals Panel reverse the hearing officer=s decision and render a decision in his favor. The respondent (carrier) replied, urging that the evidence is sufficient to support the decision of the hearing officer and requesting that it be affirmed. The claimant filed a response to the carrier=s response. It was not timely filed to be an appeal and will not be considered.

DECISION

We reform one finding of fact and affirm the decision and order of the hearing officer.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be included in this decision. In its response, the carrier referred to matters not in evidence. Only the record will be considered in rendering this decision.

The claimant sustained a compensable injury to his upper extremity, shoulder, and neck and had surgery on his elbow and wrist. The claimant had surgery on his low back, but at a prior CCH it was determined that the low back injury was not a part of the compensable injury. In a report dated August 12, 1999, Dr. P stated that the claimant=s back problem and other problems prevented him from performing a lot of jobs and that he could not perform a job that required a lot of walking, heavy lifting, bending, pushing, or pulling. The Application for [SIBs] (TWCC-52) filed by the claimant indicates that during the qualifying period he sought employment with 28 potential employers and that none of them were hiring. The claimant testified that he contacted each of the employers listed on the TWCC-52 in person or on the telephone; that that is true even though the carrier was unable to verify that he contacted some of the employers; that he learned of some of the prospective employers by looking in telephone books and newspapers and by word of mouth; that he just went to some of the places to see if they were hiring; that he told people he had not worked for about five years, they asked questions, and he told them about his injury and condition; and that in two years he did not receive any calls to be interviewed for a job.

Two of the requirements for entitlement to SIBs are that during the qualifying period the claimant was unemployed or underemployed as a direct result of the impairment from the compensable injury and that the claimant made good faith efforts to obtain employment

commensurate with his ability to work. 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. Finding of Fact No. 11 states AClaimant's unemployment is not the direct result of Claimant's compensable impairment.@ In his appeal, the claimant contends that the hearing officer erred by using Athe direct result@ rather than Aa direct result@ in that finding of fact. In the statement of the evidence section in his Decision and Order, the hearing officer wrote:

The medical evidence indicates Claimant's disability is the result of the non-compensable low back condition.

Claimant has not established by a preponderance of the credible evidence that he made a good faith effort to find employment commensurate with his ability to work or that his unemployment is a direct result of his compensable impairment. [Emphasis added.]

It appears that the use of Athe direct result@ in Finding of Fact No. 11 is a clerical error. We reform Finding of Fact No. 11 to state AClaimant's unemployment is not a direct result of Claimant's compensable impairment.@ The hearing officer's determinations, as reformed, 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).

Even if the hearing officer had erred in making Finding of Fact No. 11, the affirmed finding of fact that during the qualifying period the claimant did not in good faith seek employment commensurate with his ability to work is sufficient to support the conclusion of law that the claimant is not entitled to SIBs for the eighth quarter.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge