

## APPEAL NO. 000563

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 14, 2000. The issues at the CCH were whether the appellant (claimant) was entitled to supplemental income benefits (SIBs) for the 10th, 11th, 12th, and 13th compensable quarters, and whether claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c). The hearing officer determined that the claimant was not entitled to SIBs for the 10th, 11th, 12th, and 13th quarters and that she has permanently lost entitlement to SIBs. The claimant has requested our review, challenging all the dispositive conclusions of law and underlying findings of fact, presenting her view of the evidence, and requesting that we reverse the hearing officer=s decision. The respondent (carrier) responds, asserting the sufficiency of the evidence to support the challenged findings and conclusions and urging affirmance.

### DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, while employed by (employer), claimant sustained a compensable injury to her low back, left side, left leg, and both shoulders; that her impairment rating (IR) was 16% and that she did not elect to commute any impairment income benefits; that the 10th quarter began on June 7, 1996, and the 13th quarter ended on June 5, 1997; and that the filing period for the 10th quarter began on March 8, 1996, and the filing period for the 13th quarter ended on March 6, 1997. The hearing officer correctly stated at the outset of the hearing that the "old" SIBs rules apply to the four quarters in this case.

Claimant testified that on \_\_\_\_\_, she sustained the compensable injury when the car in which she was riding as a passenger was struck from the rear by another vehicle as she was getting out of the car; that she was treated by Dr. F and by Dr. E; and that she was released for light duty with lifting restrictions of 20 pounds but that no doctor restricted the hours that she could work. The April 23, 1994, record of Dr. E releases claimant for light duty with no lifting over 20 pounds and no repeated bending or twisting. The April 23, 1996, report of Dr. E, a neurosurgeon, stated that claimant is not a candidate for spinal surgery, that she should be treated on a conservative basis, and that she may well have to limit her activities or even change jobs. Dr. F=s report of April 24, 1996, states that claimant will need to be placed on light-duty status including no lifting with back weight in excess of 20 pounds and that this restriction will apply until further notice. Claimant further testified that from September 1995 to September 1999, she worked part-time for a home health care agency taking care of an elderly lady and that she was paid the minimum wage by the home health care agency whereas her hourly wage rate with the employer had been more than \$7.00.

Claimant further testified that during the 10th quarter filing period she made two applications for sales clerk positions but was not further contacted by these prospective employers; that during the filing periods for the 11th, 12th and 13th quarters, she did not seek

any additional employment; that during the four quarters in issue she took care of a daughter and a stepson at home; that she had an unrestricted driver's license; and that she was enrolled at a community college taking child development and criminal justice courses. Claimant at one point testified that she was a full-time student at the school during the semesters she attended but later indicated some confusion about the number of course hours she took and she acknowledged that she did not attend school in the summers. She did not introduce a transcript or other documentation of her course load at the school. Claimant further testified that at some time during the filing periods, apparently for the 10th quarter, she contacted the Texas Rehabilitation Commission (TRC), was told she did not qualify for assistance, and was advised to seek a Pell grant to go to college, which she did. She also said she contacted the predecessor agency of the Texas Workforce Commission (TWC) but, similar to the TRC contact(s), she was unable to identify the dates.

Claimant signed her Statement of Employment Status (TWCC-52) forms for the 10th and 11th quarters on May 10, 1996, and August 24, 1996, respectively. Her Application for Supplemental Income Benefits (TWCC-52) forms for the 12th and 13th quarters were signed on October 18, 1999, and November 2, 1999, respectively. Claimant acknowledged that the latter two applications were not timely filed. However, there was no disputed issue on this matter.

In addition to the dispositive legal conclusions, claimant challenges factual findings that her job search during the filing period for the 10th quarter was self-restricted, selective, and lacked timing, forethought, and diligence; that she did not look for work during the filing periods for the 11th, 12th, and 13th quarters; that she returned to work during the four filing periods earning less than 80% of her preinjury average weekly wage because of her voluntary decision to work part-time and take care of her home, minor daughter, and minor stepson and not as a direct result of her impairment; that her unemployment or underemployment during the four filing periods was not a direct result of her impairment; that claimant has not in good faith attempted to obtain employment commensurate with her ability to work during the four filing periods; and that she has not been entitled to SIBs for 12 consecutive months.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the IIBs period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage (AWW) 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. We have noted that good faith is an intangible and abstract quality with no technical meaning or statutory definition. It encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and inner spirit and, therefore, may not be determined by his protestations alone. Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, citing BLACK'S LAW DICTIONARY (6th ed. 1990).

Whether good faith exists is a fact question for the hearing officer. Texas Workers= Compensation Commission Appeal No. 94150, decided March 22, 1994.

Whether during the four filing periods in issue claimant-s underemployment was a direct result of her impairment and whether she made good faith efforts to obtain employment commensurate with her ability to work presented the hearing officer with questions of fact to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.- Houston [14th Dist.] 1984, no writ)). The hearing officer indicates in his discussion of the evidence that he did not find claimant-s testimony credible in several areas. The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King-s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill  
Appeals Judge

CONCUR:

Elaine M. Chaney  
Appeals Judge

Dorian E. Ramirez  
Appeals Judge