APPEAL NO. 000617

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 28, 2000. In response to the issue at the CCH, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter. Appellant (carrier) appeals, contending that claimant did not act in good faith and did not adequately document her job search. Claimant responds urging affirmance.

DECISION

We affirm.

Carrier contends that claimant did not adequately document her job search and that she did not meet the good faith SIBs requirement for this reason.

The hearing officer summarized the evidence in her decision and order. Briefly, claimant testified that her injury includes bilateral carpal tunnel syndrome (CTS) and depression. She testified regarding her job search and the hearing officer determined that claimant searched for work every week of the filing period. Claimant said she followed up on job leads mailed to her by Mr. M, carrier=s vocational rehabilitation counselor. The parties stipulated that: (1) claimant sustained a compensable injury with a date of injury of _____; (2) claimant's IR is 16%; and (3) claimant did not elect to commute her impairment income benefits (IIBs). It was undisputed that claimant was unemployed during the filing period. The filing period for the sixth quarter was from September 1 to November 30, 1999.

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 impairment rating (IR) of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly wage 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. 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 is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been 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 great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 130.102(d) and (e) (Rule 130.102(d) and (e)) in effect during the filing period in this case provided in part:

(d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

* * * *

(4) has provided sufficient documentation as described in subsection (e) of this section to show that he has made a good faith effort to obtain employment.

(e) Job Search Efforts and Evaluation of Good Faith Effort. Except as provided in subsections (d)(1), (2), and (3) of this section, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

Only documented efforts should be considered in determining if the requirements were met. *See* Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999. In this case, carrier appears to contend that claimant=s documentation is not adequate because claimant did not include her original notes that she used to document her job search. However, we perceive no error in the hearing officer=s determinations and reject carrier=s argument regarding the method and manner of claimant=s documentation. Carrier next contends that claimant=s documentation does not reflect her Atrue@ job search efforts. However, this involved a fact issue for the hearing officer. The hearing officer determined that claimant did make a weekly job search and we conclude that this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Carrier asserts that claimant did not search for work that she was capable of performing. However, as the hearing officer noted, claimant said some of her job searches involved following up on the contacts sent to her by carrier=s vocational rehabilitation counselor. The hearing officer could have considered this as some evidence that the jobs sent to claimant were jobs the counselor believed claimant could do. Further, claimant said she made other searches on her own and that she would have discussed what the jobs involved and whether she could do them once she obtained an interview. Whether claimant was acting in good faith was a fact issue that the hearing officer determined in claimant=s favor. We perceive no error in this determination.

We affirm the hearing officer=s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge