

APPEAL NO. 000640

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 16, 2000. The issue at the CCH was whether the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh quarter. The hearing officer determined that the claimant is entitled to SIBs for the seventh quarter. The appellant (carrier) appeals on sufficiency grounds. The claimant responds, urging affirmance.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant acted in good faith. Carrier asserts that claimant did not follow up on the applications she sent by facsimile transmission, that she did not spend adequate time on the telephone with employers she did call, that she did not search for jobs that she was able to do and for which she would be hired, and that carrier was not able to confirm that claimant actually made the applications she claimed to have made.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the impairment income benefits (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 (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. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

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 hearing officer summarized the evidence in her decision. Briefly, claimant testified that her _____, injury was to her right knee, right shoulder, right elbow, and both hands. Medical records indicate that claimant sustained her compensable injury in a fall and that claimant uses a walker and a cane. Claimant testified that she has pain daily and that she takes pain medications, anti-inflammatories, and other medications. Claimant said that her doctor, Dr. S, has not released her to work, but that a functional capacity evaluation report from 1999 stated that she could do sedentary work. Claimant said Dr. S told her not to drive because of her knee injury, so she must either use a handi-ride@bus or ask her mother for

transportation. Claimant stated that she made approximately 126 job searches during the filing period. She testified that she had been working in a medically related job at the time of her injury. She said she drove children to medical appointments, followed up regarding vaccinations, talked to parents about medical care, and performed some medical examinations. She said she found some potential job leads by looking in the newspaper, that she sent resumes and applications by facsimile transmission, and that she went on three interviews during the filing period. Claimant said she thought some potential employers might prejudge her because of her obesity.

The parties stipulated that: (1) claimant sustained a compensable injury on A _____ [_____]@; (2) claimant's IR is 15%; and (3) claimant did not elect to commute her SIBS. The filing period for the seventh quarter was from approximately mid-August to mid-November 1999.

The hearing officer was the judge of the credibility of the evidence. As the fact finder, she considered the issue of good faith and SIBs entitlement and resolved this issue in claimant's favor. The matters carrier raises in its brief involved credibility and fact issues, which the hearing officer resolved. The hearing officer is the sole judge of the credibility of the evidence. We will not substitute our judgment for hers in that regard because the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain, supra*. Given our standard of review we will not overturn the hearing officer's decision. *Id.*

Carrier asserts that claimant's job search was not adequately documented. Carrier contended that claimant merely faxed applications and resumes to employers, and apparently asserts that claimant should have provided applications and other documents to support her position at the CCH. Claimant documented her job search by listing the employers she contacted on the Application for [SIBs] (TWCC-52). We have reviewed the evidence regarding claimant's documented job search and we reject carrier's contentions in this regard. The hearing officer determined that claimant met the good faith SIBs requirements and we conclude her determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Carrier next asserts that claimant failed to prove that she has not returned to work or has earned less than 80% of the AWW weekly wage as a direct result of the impairment from her compensable injury. Carrier asserts that the reason claimant is not working is because she did not make an adequate job search and because she would not be hired for the jobs she applied for due to her obesity. In June 1999, Dr. B stated that claimant uses a walker and said that he doubted that claimant could do even sedentary work. Claimant testified that she cannot drive and that her prior job involved some driving. We conclude that the hearing officer's direct result determination is sufficiently supported by evidence that the claimant sustained a serious injury with lasting effects and that, during the filing period, she could not reasonably perform the type of work being done at the time of the injury. See Texas Workers' Compensation

Commission Appeal No. 000030, decided February 22, 2000; Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996. The hearing officer could find from the evidence that claimant has not returned to work and this is at least a direct result of the impairment from her compensable injury.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge