

APPEAL NO. 000810

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 March 27, 2000. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the ninth compensable quarter. In her appeal, the claimant essentially argues that the hearing officer's determination that she did not make a good faith job search in the qualifying period for the ninth quarter of SIBs is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance. The self-insured did not appeal the hearing officer's determination that the claimant's unemployment during the qualifying period was a direct result of her impairment from the compensable injury and that determination has, therefore, become final under Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on January 14, 1997, with an impairment rating of 17%; that she did not commute her impairment income benefits; that the qualifying period for the ninth quarter of SIBs ran from September 30 to December 29, 1999; and that the ninth quarter ran from January 12 to April 11, 2000. The claimant's treating doctor during the qualifying period was Dr. K. In a "To Whom it May Concern" letter dated February 1, 2000, Dr. K stated that according to a functional capacity evaluation (FCE), the claimant is capable of working in a sedentary capacity. The FCE report also reflects that the claimant performed at the sedentary physical demand level in the testing. Similarly, Dr. S, who examined the claimant at the request of the self-insured, opined that the claimant "will probably be employable in a sedentary job"; however, Dr. S noted that "her depression may make that difficult."

The claimant testified that she looked for work in each week of the qualifying period and, as the hearing officer noted, those efforts are documented on the claimant's Application for Supplemental Income Benefits (TWCC-52). The claimant testified that in order to identify potential job opportunities in the qualifying period, she reviewed classified advertisements in her local paper, made cold calls on other employers in her area, went to the Texas Workforce Commission (TWC) to check the computer, and received assistance from Ms. P, a counselor at the Texas Rehabilitation Commission (TRC). The claimant made employment contacts on 19 days of the 90-day qualifying period and testified that her job search efforts on those days took between 30 minutes to one hour.

The hearing officer determined that the claimant did not make a good faith effort to look for work commensurate with her ability to work in the qualifying period for the ninth quarter of SIBs. The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §

130.102(d)(4) (Rule 130.102(d)(4)) applicable in this case provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) of Rule 130.102 provides, in relevant part, that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for work every week of the qualifying period and document his or her job search efforts." Rule 130.102(e) also includes a non-exhaustive list of factors to be considered in determining whether the injured employee has made a good faith job search, which includes, among other factors, the number of jobs applied for, cooperation with the TRC, amount of time spent in attempting to find employment, any job search plan of the injured employee, and registration with the TWC.

The issue of whether the claimant made a good faith job search in the qualifying period for the ninth quarter was a question of fact for the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviews the evidence before her and determines what facts the evidence has 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 overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. In making her determination that the claimant did not make a good faith job search in the relevant qualifying period, the hearing officer noted the limited number of days that the claimant looked for work and the limited time spent on those days in looking for work. In addition, the hearing officer noted that the claimant needed a better job search plan than to make cold calls on businesses that were not hiring, while recognizing that the claimant had registered with the TWC and was cooperating with the TRC. As noted above, each of the factors emphasized by the hearing officer is a factor specifically listed in Rule 130.102(e) as a proper factor to consider in resolving the good faith issue. Simply put, the hearing officer was not persuaded that when the claimant's job search efforts were considered as a whole, they demonstrated that she made a good faith effort to look for work in the qualifying period. Nothing in our review of the record demonstrates that that determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's good faith determination, or the determination that the claimant is not entitled to SIBs for the ninth quarter, on appeal. Cain, supra.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge