

APPEAL NO. 001054

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 February 7, 2000. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 000396, decided March 29, 2000, remanded the case to the hearing officer for reconsideration because the hearing officer erroneously applied the "new" rules pertaining to supplemental income benefits (SIBs) to the eighth quarter filing period and because several findings mentioned a heart condition and surgery instead of a knee condition and surgery. No hearing on remand was necessary and none was held. Upon remand, the hearing officer took official notice of the record of the February 7, 2000, hearing, reconsidered the evidence, and issued a new Decision and Order determining, as he did in his earlier Decision and Order, that the appellant (claimant) is not entitled to SIBs for the seventh and eighth quarters because he failed to make a good faith effort to seek employment commensurate with his ability to work during the filing periods for the seventh and eighth compensable quarters. Claimant appeals only the seventh quarter determination, asserting error in the hearing officer's finding that he did not attend college as part of a vocational training program sponsored by the Texas Rehabilitation Commission but rather attended college utilizing benefits provided by the Department of Veterans Affairs. Claimant also complains that the hearing officer did not hold another hearing on remand. In response, the respondent (carrier) urges the sufficiency of the evidence to support the hearing officer's decision.

DECISION

Affirmed.

Our decision in Appeal No. 000396 contains a summary of the evidence of record. As we noted in that decision, claimant did not appeal the hearing officer's determination that he is not entitled to SIBs for the eighth quarter. In his appeal after remand, claimant states he is "only appealing the seventh quarter of sibs."

As we stated in our earlier decision, 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 employee's 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. 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. 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.

Because the parties stipulated that claimant's IR is 51% and that he did not commute any IIBs and because the hearing officer has found that claimant's unemployment during the eighth quarter filing period was a direct result of his impairment, the only SIBs entitlement issue on appeal is the adequacy of the evidence to support the hearing officer's finding that claimant did not make a "good faith effort" to seek employment commensurate with his ability to work during the filing period.

Not specifically disputed by claimant are findings that claimant was engaged in part-time writing during the pertinent filing period but made little effort to promote income from that endeavor; that his part-time writing was not commensurate with his ability to work; and that he was able to engage in part-time, light-duty employment throughout the eighth quarter filing period but made no effort to seek employment commensurate with his ability to work.

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 Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual determinations of a hearing officer unless they are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. 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).

Because the case was remanded for the correction of legal error, no additional evidence was necessary to be developed for resolution of the disputed issues. Thus, we find no merit in claimant's assertion of error concerning the hearing officer's not holding another hearing.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge