APPEAL NO. 001186

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 April 6, 2000. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 10th compensable quarter based upon his finding that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the 10th quarter. The claimant appeals, arguing that the evidence established he made a good faith job search. There is no response to the claimant's request for review by the respondent (carrier) in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that on _____, the claimant sustained a compensable injury; that the claimant reached maximum medical improvement with an impairment rating of 15% or greater; that the claimant did not elect to commute any portion of his impairment income benefits; and that the 10th quarter began on January 6, 2000, and ended April 5, 2000. The claimant testified that he was injured when he slipped and fell at work. The claimant also testified that this injury resulted in two surgeries to his right ankle; that he is unable to return to his previous employment as a result of his injury; and that he searched for work every day, and sometimes into the night, using the newspaper and the Internet to find job openings. The claimant would then send letters and resumes by facsimile transmission or mail to prospective employers. The claimant listed 39 job contacts on his Application for [SIBs] (TWCC-52). It is undisputed that, using the job search method described by the claimant, he did find employment on January 28, 2000, as a courier.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b))[1], the quarterly entitlement to SIBs is determined prospectively and depends on whether the employee meets the criteria during the "qualifying period." Under Rule 130.101, "qualifying period" is defined as the 13-week period ending on the 14th day before the beginning of a compensable quarter.

We have previously held that both the question of whether the claimant made a good faith job search and whether the claimant's unemployment was a direct result of his

[1]The "new" SIBs rules which went into effect on January 31, 1999, and November amendments control in the present case. *See* Texas Workers' Compensation Commission Appeal No. 992126, decided November 12, 1999.

impairment are questions of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Rule 130.102(e) provides:

> (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. In determining whether or not the injured employee has made a good faith effort to obtain employment under subsection (d)(4) of this section, the reviewing authority shall consider the information from the injured employee, which may include, but is not limited to information regarding:
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> (1) number of jobs applied for throughout the qualifying period;
>
> (2) type of jobs sought by the injured employee;
>
> (3) applications or resumes which document the job search efforts;
>
> (4) cooperation with the Texas Rehabilitation Commission;
>
> (5) education and work experience of the injured employee;

(6) amount of time spent in attempting to find employment;

(7) any job search plan by the injured employee;

(8) potential barriers to successful employment searches;

(9) registration with the Texas Workforce Commission; or

(10) any other relevant factor.

Applying our standard of review, as well as the requirements of the 1989 Act and the rules cited above, we find no error in the hearing officer's determination that the claimant was not entitled to SIBs for the 10th compensable quarter. The hearing officer found that the claimant's job search during the qualifying period did not constitute a good faith effort to seek employment commensurate with his ability to work. We do not interpret the rule to require the hearing officer to find a good faith job search where it is established that a claimant made at least one job search every week. While the claimant argues that his search was sufficient to meet the good faith job search requirement, we will not substitute our judgment for the hearing officer's factual determination. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Dorian E. Ramirez
Appeals Judge

Judy L. Stephens
Appeals Judge