

APPEAL NO. 001302

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 May 2, 2000. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the third quarter, which ran from December 30, 1999, to March 29, 2000. In its appeal, the appellant (carrier) argues that the hearing officer's determinations that the claimant made a good faith effort to look for work commensurate with his ability, that his unemployment in the qualifying period was a direct result of his impairment, and that the claimant is entitled to SIBs for the third quarter are against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he was assigned an impairment rating of 15% or more; that he did not commute his impairment income benefits; and that the third quarter of SIBs ran from December 30, 1999, to March 29, 2000. The parties did not stipulate as to the dates of the qualifying period for the third quarter; however, that period was identified, without objection, as the period from September 17 to December 16, 1999. The claimant testified that he looked for work in each week of the qualifying period. The pages attached to his Application for Supplemental Income Benefits (TWCC-52) reflect that the claimant made 80 job contacts in the qualifying period. The claimant testified that he called each of the prospective employers to ensure that they had an opening before he completed an application; that he completed an application with each potential employer; and that he did not receive any interviews or job offers as a result of the contacts he made during the qualifying period. The claimant stated that he was looked for job leads at the Texas Rehabilitation Commission (TRC), the Texas Workforce Commission, and a local college job placement service.

During the qualifying period, the claimant underwent diagnostic, evaluative, vocational, and psychological testing@at the TRC. The claimant testified that as a result of that testing, the TRC sent him to a three-month computer skills course, which he began in January 2000 and completed on April 28, 2000.

On cross-examination, the claimant acknowledged that in January 1999 he was working for a funeral home and that he was terminated from that employment after he had worked there for three to four weeks. He stated that he received a letter advising him that his services were no longer required because of the results of a background check.

The carrier contends that the hearing officer erred in determining that the claimant's unemployment during the qualifying period was a direct result of his impairment from the

compensable injury. The carrier contends that the claimant's unemployment is a result of his termination from his job at the funeral home and not his impairment. Although the hearing officer was free to consider the claimant's termination in making his direct result determination, he was not required to determine, as a matter of law, that the impairment from the compensable injury was not a factor in the claimant's unemployment in the qualifying period.

The hearing officer determined that the claimant made a good faith effort to look for work commensurate with his ability to work in the qualifying period for the third 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.

The issue of whether the claimant made a good faith job search in the qualifying period 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). Where there are conflicts and inconsistencies in the evidence, the hearing officer resolves those conflicts and inconsistencies 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 arguing that the hearing officer's good faith determination is against the great weight of the evidence, the carrier contends that the claimant was merely going through the motions and was not actually looking for work. In support of its argument, the carrier emphasizes that on the last page of the attachments to his TWCC-52, the claimant had already checked the box stating that a job offer was not made on lines of the form where no search is listed and that he did not produce any copies of applications he completed. The carrier emphasized the same factors at the hearing and it was a matter for the hearing officer to determine the significance, or lack thereof, of those factors to his resolution of the good faith issue. The hearing officer was persuaded that the claimant's job search efforts in the qualifying period rose to the level of a good faith search.

Our review of the record does not demonstrate that the hearing officer's good faith 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 that

determination, or the determination that the claimant is entitled to SIBs for the third quarter, on appeal. Cain, supra.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge