

APPEAL NO. 001388

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 June 1, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the third and fourth quarters. The appellant (carrier) appealed, contending that claimant's evidence was not credible and that the hearing officer should have determined the good faith issue against claimant. Carrier also appealed the direct result determination in claimants' favor. The appeals file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant is entitled to SIBs for the third and fourth quarters. Carrier asserts that claimant's evidence regarding his job search was not credible.

The hearing officer summarized the evidence in her decision and order. The qualifying periods for the third and fourth quarters ran from July 17, 1999, to January 14, 2000. Claimant testified that he sustained a compensable injury to his back and leg while going to get some pants. He said his leg fell through a hole in a platform and his entire leg got caught. Claimant underwent knee surgery in November 1997, but his treating doctor stated that this resulted in very limited success. In November 1999, Dr. A, who indicated that he was designated doctor, certified a 16% impairment rating (IR), which included impairment for a torn meniscus, arthritis, chondromalacia, anterior cruciate ligament loss, and loss of range of motion in the knee and lumbar spine. Claimant testified regarding his job search. The hearing officer determined that claimant made 39 job contacts during the third quarter qualifying period and 28 job contacts during the qualifying period for the fourth quarter, searching for work every week of the qualifying period.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the IIBs period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the 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. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.142(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 judgement 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.,decided

The Texas Workers' Compensation Commission's rules state that, except as provided in subsections that do not apply in this case, 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 this case, carrier contends that claimant's testimony regarding his job search was not credible and that claimant did not intend to get a job. However, this involved a fact issue for the hearing officer. Whether claimant was acting in good faith and sought jobs he could and would do involved fact issues that the hearing officer determined in claimant's favor. The hearing officer determined that claimant did make a good faith, weekly job search. We conclude that the hearing officer's good faith determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, *supra*.

Carrier contends the hearing officer erred in determining that claimants' unemployment is a direct result of his impairment. In August 1999, during the qualifying period for the third quarter, Dr. M stated that the claimant was unable to work. Therefore, the hearing officer's direct result determination is supported by the evidence that claimant sustained a serious injury with lasting effects and that, during or near the time of the qualifying periods in question, he could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 93559, decided August 20, 1993; Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996., decided

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge