

APPEAL NO. 001448

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 10th quarter. The appellant (carrier) appeals, contending that this determination is against the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable low back injury on _____. 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 (AWW) 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)), the quarterly entitlement to SIBs depends on whether the employee meets the criteria during the qualifying period. The 10th SIBs quarter was from February 25 to May 26, 2000, and the qualifying period was from November 13, 1999, to February 11, 2000.

At issue in this case is whether the claimant made the required good faith job search. Medical evidence reflected that he could work an eight-hour day in a sedentary capacity. He submitted an Application for [SIBs] (TWCC-52) on which he listed some 24 job contacts, including multiple contacts with the Texas Workforce Commission (TWC). He further testified and produced documentary evidence that he was registered with the Texas Rehabilitation Commission (TRC) during the qualifying period; that he cooperated with a vocational consultant supplied by the carrier; that the TWC refused to provide him services because he was receiving workers' compensation benefits; that his job search consumed about 15 hours per week and he was in too much pain or therapy to do more; and that he sought work where help wanted was advertised, but observed also that no employer advertised that sedentary positions were available. Other evidence included the report of the vocational counselor that limited jobs were available and that most of the employers allegedly contacted by the claimant failed to confirm the contact or said that no jobs were available.

The claimant had the burden of proving a good faith job search commensurate with his ability to work as a condition to his receiving SIBs. Whether he did so presented a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. The hearing officer considered the claimant's compensable injury, his limited (seventh grade) education, and his work

skills (a history of manual labor) and concluded that he made the required good faith job search. The carrier appeals this determination, asserting that "none" of the places he sought employment were hiring; generally noting the unsuccessful consequences of the search; and contending that he should have sought work for more than 15 hours per week. It also appears to argue that the claimant should have spent more time seeking employment directly from potential employers rather than relying on agencies (public and private) to provide him with job leads. These matters were properly considered by the hearing officer and assigned the weight and credibility he deemed appropriate. Section 410.165(a). For example, much is made of the claimant's answer that he spent 15 hours per week looking for work. The hearing officer could have concluded that the claimant meant that he spent 15 hours per week filling out applications and traveling to various employment locations and that the claimant did not include other activities supporting a job search in this 15-hour figure. In any case, we will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's determination that the claimant made the required good faith job search and was entitled to 10th quarter SIBs.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge