

APPEAL NOS. 001498 and 001873
FILED AUGUST 22, 2000

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing regarding both docket numbers was held on June 14, 2000, in _____, Texas, with _____ presiding as hearing officer. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 16th and 17th quarters and that the claimant has permanently lost entitlement to SIBs because he was not entitled to them for 12 consecutive months. Claimant appealed, contending that the evidence shows he met his burden to prove entitlement to SIBs. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order. The direct result determination in claimant's favor was not appealed.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he is not entitled to 16th and 17th quarter SIBs. Claimant asserts that he made a weekly job search and complied with the SIBs rules regarding good faith. The applicable statutes and our appellate standard of review are discussed or set forth in Sections 408.142(a) and 408.143; Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 951487, decided October 19, 1995; Section 410.165(a); and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this case, claimant contends that the evidence regarding his job search showed he met the requirements of the SIBs rules. Whether claimant was acting in good faith and made an effort to search for work commensurate with his ability to work involved a fact issue that the hearing officer determined against claimant.

The hearing officer determined that claimant made a weekly job search, but that this did not constitute good faith in claimant's case. The hearing officer said that claimant had repeatedly applied for the same jobs in the area of the small town where he lives. For example, claimant asked about a job at (store A) in the small neighboring town of _____, Texas (city A) five times during the qualifying period for the 16th quarter. Two of the times he asked about work there took place only about two weeks apart. Thirteen of claimant's documented job searches were with the Texas Workforce Commission (TWC), but claimant said he had not received any job leads from the TWC. The hearing officer indicated that claimant did not have a sufficient plan for seeking work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e) does list factors for the hearing officer to consider when determining if a claimant has

made a good faith job search. Among others, these factors include: (1) number of jobs applied for throughout the qualifying period; (2) type of jobs sought; (3) amount of time spent in attempting to find employment; and (4) any job search plan by the injured employee. After considering the evidence regarding these factors and the hearing officer's decision, 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 or manifestly unjust. Cain, *supra*.

Pursuant to Section 408.146(c), an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury. There was evidence that claimant was not entitled to SIBs for the 14th and 15th quarters. Given this and our affirmance in this case, we conclude that the hearing officer's determination regarding permanent loss of entitlement is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge