

## APPEAL NO. 001572

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 14, 2000. The appellant (claimant) and the respondent (carrier) stipulated that the 11th quarter for supplemental income benefits (SIBs) began on March 24, 2000, and would end on June 22, 2000, and that during the qualifying period for that quarter the claimant earned no wages. The hearing officer determined that during that qualifying period the claimant's unemployment was a direct result of his impairment from the compensable injury. That determination has not been appealed and has become final under the provisions of Section 410.169. The hearing officer also made findings of fact that during the qualifying period the claimant cooperated with the Texas Rehabilitation Commission (TRC), but was not enrolled in a full-time program sponsored by the TRC; that he made approximately 14 job searches which resulted in no interviews or job offers; that the claimant conducted and documented one job search every week; that his efforts to find work lacked the objective manifestations of "good faith" with respect to timing, forethought, and diligence in his efforts to obtain employment; and that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work and concluded that he is not entitled to SIBs for the 11th quarter. The claimant appealed the findings of fact that during the qualifying period his efforts to find work lacked the objective manifestations of "good faith" with respect to timing, forethought, and diligence in his efforts to obtain employment and that he did not make a good faith effort to obtain employment commensurate with his ability to work and the conclusion that he is not entitled to SIBs for the 11th quarter. He requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to SIBs for the 11th quarter. The carrier responded, contended that the claimant sought employment only to obtain entitlement to SIBs, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

### DECISION

We reform the decision and affirm it as reformed.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence related to the appealed determinations will be included in this decision. During the qualifying period, the claimant sought employment with one employer during each week. He said that he has considerable pain, that he could lift only 20 to 30 pounds, and that his condition limited him to seeking employment only one day a week. The claimant testified that after he learned what was involved in the jobs he sought, he did not meet the requirements of most of the jobs because some of the jobs required lifting that he could not do and because some jobs required a college degree.

In Texas Workers' Compensation Commission Appeal No. 992810, decided January 28, 2000, the carrier complained that the hearing officer did not make a finding concerning "timing, forethought, and diligence" in making the job search. The Appeals Panel said that

it had stated in prior decisions that a good faith determination “can encompass the manner in which a job search is undertaken with respect to timing, forethought, and diligence”; that Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE §130.102(e) provides criteria for determining a good faith job search; that one of the criteria is “any job search plan” without stating that such plan must show “timing, forethought, and diligence”; and that the statement of the evidence in the Decision and Order of the hearing officer showed that she considered many factors in determining whether the claimant’s job search was conducted in good faith to find a job. The Appeals Panel affirmed the decision that the claimant was entitled to SIBs. In the case before us, the hearing officer stated in her statement of the evidence that Rule 130.102(e) applied; that the claimant made only one job search a week; that the medical evidence did not support his contention that he could make only one search a week; that the claimant testified that many of the jobs he sought required physical activity beyond his ability or required a college degree; and that the claimant was unconvincing that he was actually seeking employment with the intention of returning to work and not simply going through the motions to qualify for SIBs. While the hearing officer did make a finding of fact that uses language in Appeals Panel decisions rendered before the effective date of Rule 130.102(e), made a finding of fact that the claimant conducted a job search every week of the qualifying period, and did not make other findings of fact using the criteria contained in that rule; the statement of the evidence in the hearing officer’s Decision and Order indicates that she considered the criteria in Rule 130.102(e) in rendering her decision. We have previously encouraged hearing officers to make findings of fact concerning the provisions of Texas Workers’ Compensation Commission rules, especially those related to entitlement to benefits. We again do so.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness’s testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness’s testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref’d n.r.e.); Texas Workers’ Compensation Commission Appeal No. 93426, decided July 5, 1993. As stated earlier in this decision, the statement of the evidence in the hearing officer’s Decision and Order indicates that she considered the provisions of Rule 130.102(e) in determining that the claimant did not make a good faith effort to obtain employment during the qualifying period and that he is not entitled to SIBs for the 11th quarter. Her determination that during the qualifying period for the 11th quarter for SIBs the claimant did not make a good faith effort to obtain employment commensurate with his ability to work is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is affirmed. In re King’s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Conclusion of Law No. 3 and the decision of the hearing officer contain clerical errors. We reform them to state that the claimant is not entitled to SIBs for the 11th quarter and affirm them as reformed. We also affirm the order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Kathleen C. Decker  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge