

## APPEAL NO. 001666

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 June 13, 2000. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth quarter. In his appeal, the claimant essentially argues that the hearing officer's determinations that he did not make a good faith effort to look for work commensurate with his ability to work in the eighth quarter qualifying period and that he is not entitled to eighth quarter SIBs are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) 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 greater for his compensable injury; that he did not commute his impairment income benefits; that the eighth quarter of SIBs ran from April 2 to July 1, 2000; and that the qualifying period for the eighth quarter ran from December 20, 1999, to March 21, 2000. The claimant's Application for [SIBs] (TWCC-52) reflects that the claimant made nine employment contacts in the qualifying period and it did not establish that he had sought employment in each week of the qualifying period. The claimant testified that each of the contacts he made came from a referral by the Texas Workforce Commission and that in two of the weeks that he did not look for work he was hospitalized; however, he did not introduce documentary evidence in support of that assertion.

The claimant's entitlement to SIBs is to be determined in accordance with the "new" SIBs rules. Texas Workers' Compensation Commission Appeal No. 991555, decided September 7, 1999. 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 decides the weight to assign to the evidence before her and resolves conflicts and inconsistencies in the evidence. 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. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied).

In making her determination that the claimant did not make a good faith job search in the qualifying period for the eighth quarter, the hearing officer noted that the claimant's documentary evidence did not reflect that the claimant sought employment each week of the qualifying period. That is, neither the claimant's TWCC-52 nor any other

documentation establishes that the claimant looked for work in each week of the qualifying period. The hearing officer's determination in that regard is not so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In light of our affirmance of that determination, the hearing officer properly determined that the claimant did not make a good faith effort to look for work commensurate with his ability to work in the eighth quarter qualifying period because she determined that the claimant did not look for work in each week of the qualifying period as he was required to do under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(e) (Rule 130.102(e)).

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge