

APPEAL NO. 001901

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 July 6, 2000. The record closed July 21, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 8th quarter. Claimant appealed the adverse good faith and direct result determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she did not meet her burden of proof regarding the good faith SIBs criterion. The hearing officer discussed the facts of this case in his decision and order. The applicable law and our standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000, and Texas Workers' Compensation Commission Appeal No. 001013, decided June 22, 2000.

In this case, claimant had returned to work during three weeks of the qualifying period. However, there was also evidence that, during the qualifying period, claimant had declined a job offer from (company), but represented on her Application for [SIBs] (TWCC-52) that she had *not* been offered a job by that employer. Claimant was inconsistent in her testimony when explaining the circumstances in this regard. The hearing officer determined that claimant "engaged in inexcusable deceit" regarding what she documented on her TWCC-52 and determined that she did not make a good faith effort to obtain employment commensurate with her ability to work.

Under the particular facts of this case, the hearing officer could consider the evidence and determine that claimant did not meet her burden regarding the good faith SIBs criterion. This is so despite any evidence that claimant worked during part of the qualifying period. Under these unusual facts, we conclude that there was overriding evidence of a lack of good faith, which cannot be ignored. We conclude that the hearing officer's determination regarding good faith is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Regarding claimant's assertion that she met her burden of proof regarding the direct result SIBs criterion, we note that direct result is a fact issue for the hearing officer. In this particular case, the hearing officer could find from the evidence that claimant's unemployment or underemployment was completely a result of factors other than her impairment. We conclude that the hearing officer's determination regarding direct result 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).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Philip F. O'Neill
Appeals Judge