

APPEAL NO. 002374

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 September 21, 2000. The issue at the CCH was whether the respondent (claimant) was entitled to supplemental income benefits (SIBs) for his 14th quarter of eligibility. The hearing officer found that the claimant made a good faith search for employment commensurate with his ability to work, and that his unemployment was the direct result of his impairment.

The appellant (carrier) has appealed, arguing that the hearing officer's factual determinations were so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. The carrier spells out some facts it believes show the search for employment was not bona fide. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

The claimant injured his back and right hip on _____. He did not have surgery. At the time of the CCH, he took pain medication. The claimant said that he saw his treating doctor only once every three months. He said he still felt constant pain in his back and lower extremities. The only documentary evidence consisted of the claimant's Application for [SIBs] (TWCC-52) and supporting documents, and an unsigned copy of a report from a person who asserted that she checked the contacts listed on the TWCC-52. There were no medical reports detailing the claimant's restrictions, but he testified that he could not sit or stand for long periods of time, and that he had a 20-pound lifting limit.

As the hearing officer stated, approximately 70 job contacts were listed through every week of the filing period, which ran from December 22, 1999, through March 21, 2000. The claimant said that all contacts he made were listed on the TWCC-52. He stated that he had contacted the Texas Workforce Commission (TWC) and went there once a week during the filing period. The carrier's attorney brought out that all of these visits to TWC were not listed. The jobs the claimant sought were referred by the carrier as well as his own efforts. He submitted applications to apartments for cleaning and maintenance jobs. In another case, he applied for a parking lot attendant job. There were sales and stocker jobs listed as well. He was asked on cross-examination about specific contacts he had listed and how he found out about the jobs. The claimant agreed that he had applied in previous quarters to some of the places listed, and that he in fact has been interviewed before by at least one of the employers.

The report submitted by the carrier indicated that a number of the prospective employers could not be contacted or did not return calls. Of the 45 who were contacted, six declined to search or release information about applications on file. Five others said they would research and get back and did not. Whoever was contacted for the other

employers apparently relayed the information that an application could not be found or was not on file.

The factors that a hearing officer may consider in evaluating the quality of a search for employment are set forth in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)). This case presented to the hearing officer matters that had to be weighed. We have reviewed the record and cannot agree that the decision is against the great weight and preponderance of the evidence, even if different inferences could be drawn.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge