

## APPEAL NO. 002377

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 September 6, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter. Appellant (carrier) appealed alleging sufficiency grounds. Claimant 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.

Carrier contends the hearing officer erred in determining that claimant is entitled to SIBs for the 11th quarter. Carrier asserts that claimant's evidence regarding his job search was not credible because it could not be verified and that claimant was not in good faith because he sought jobs he was unable to do.

The hearing officer very briefly summarized the evidence in his decision and order. Claimant's Application for [SIBs] (TWCC-52) indicates that the qualifying period for the 11th quarter ran from August 29, 1999, to November 27, 1999. Claimant testified that he sustained a low back lifting injury, that he had fusion surgery, and that he constantly suffers severe back and right leg pain. In an August 17, 1999, report, Dr. S, claimant's surgeon, stated that claimant had a nonunion of his fusion, but that claimant does not want more surgery. Claimant testified regarding his job search and the hearing officer stated that claimant was a credible witness. The hearing officer determined that claimant met his burden to prove that he made a good faith job search. On his TWCC-52, claimant documented a weekly job search.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the impairment income benefits (IIBs) period expires if the employee has: (1) an impairment rating of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. The Texas Workers' Compensation Commission rules state that, except as provided in subsections that do not apply in this case, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)).

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been established. We will not substitute our judgment for the hearing officer's regarding SIBs entitlement

because it 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Whether claimant was acting in good faith and sought jobs he was able to do involved fact issues that the hearing officer determined in claimant's favor. The hearing officer could find from the evidence that claimant did make a good faith, weekly job search. We conclude that the hearing officer's good faith determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The hearing officer stated that the findings of Dr. P, whom the parties stipulated was selected as a designated doctor "for supplemental income benefit purposes," were "somewhat equivocal" regarding claimant's ability to work. The hearing officer clearly found that claimant had some ability to work. At this juncture, we need not address carrier's request regarding clarification of Dr. P's report. We also need not address claimant's conditional cross-point of error, which claimant asked us to consider only if we reversed the hearing officer's good faith job search determination.

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Kenneth A. Huchton  
Appeals Judge