

APPEAL NO. 002405

Following a contested case hearing held on September 6, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer the disputed issue by determining that the respondent (claimant) is entitled to the first quarter of supplemental income benefits (SIBs). The appellant (carrier) asserts that the hearing officer's determination that the claimant made a good faith effort to seek employment commensurate with his ability to work during each week of the qualifying period is against the great weight and preponderance of the evidence and requests that we reverse the hearing officer's decision and render a new decision that the claimant is not entitled to the first quarter of SIBs. The claimant did not respond.

DECISION

Affirmed.

The claimant sustained a work-related lumbar spine injury, was assigned a 25% impairment rating (IR), did not commute any of the impairment income benefits (IIBs), and was found to be entitled to the first quarter of SIBs by the hearing officer. The claimant's entitlement to SIBs was based upon the hearing officer's determinations that the claimant's unemployment during the qualifying period for the first quarter was a direct result of his impairment and that the claimant made a good faith effort to seek employment during each week of the qualifying period.

The carrier appeals the hearing officer's determination that the claimant made a good faith effort to seek employment commensurate with his ability to work, asserting that the claimant failed to look for work each week of the qualifying period and failed to document his job search efforts. The hearing officer's determination that the claimant's unemployment during the qualifying period was a direct result of his impairment has not been appealed and has become final.

The carrier asserts that the claimant did not make a good faith effort to seek employment because he concentrated his job search on openings with city 1 and did not seek employment in his city of residence, (city 2).

It is undisputed that the claimant sought employment only with city 1 during the qualifying period. It is also undisputed that the claimant applied for a number of different positions with city 1 at different times throughout the qualifying period and that the claimant ultimately secured a job with city 1, although he was offered employment after the qualifying period ended.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)) provides that an injured employee who has an IR of 15% or greater, and who has not commuted any IIBs, is eligible to receive SIBs if, during the qualifying period, the employee:

- (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and
- (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work.

Rule 130.102(e) provides that:

[A]n 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.

We have held in the past that documentation of a weekly job search does not require that an application for employment be filed each week. Texas Workers' Compensation Commission Appeal No. 001177, decided July 12, 2000. We have also held that there is no requirement that the only documentation that can be considered is the documentation submitted with the Application for [SIBs] (TWCC-52). Texas Workers' Compensation Commission Appeal No. 992269, decided December 1, 1999 (Unpublished). Documentation of the claimant's job search was admitted in the form of a letter from the human resources department which stated that from November 1999 through March 2000, the claimant had been by the department at least twice a week seeking employment. The hearing officer's findings that the claimant sought employment each week of the qualifying period and that the claimant's weekly job search was documented are not against the great weight of the evidence as to be clearly wrong.

The carrier argues that the claimant's restriction of his job search to a single employer renders the hearing officer's finding that the job search was in good faith against the great weight of the evidence. Under the circumstances presented here, we disagree.

In Texas Workers' Compensation Commission Appeal No. 970566, decided May 13, 1997, we affirmed a hearing officer's decision that an employee's job search efforts with a single employer was in good faith. In that case, the employee sought employment as a nurse at a hospital and, as part of a campaign to obtain employment at the hospital, the claimant convinced his school to establish a preceptorship with the hospital, a preceptorship in which he participated. We compared the employee's efforts in Appeal No. 970566 to another employee's job search campaign with a single employer in Texas Workers' Compensation Commission Appeal No. 970343, decided April 14, 1997 (Unpublished).

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 are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence

as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The hearing officer's determination that the claimant made a good faith effort to obtain employment commensurate with his ability to work is supported by the evidence and is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge