

## APPEAL NO. 002419

Following a contested case hearing held on September 12, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by finding that during the qualifying period for the 10th quarter the appellant (claimant) did not attempt in good faith to find employment commensurate with her ability to work and by concluding that she is not entitled to supplemental income benefits for that quarter. The claimant has appealed, asserting that during the qualifying period she made 29 job contacts, including places that were hiring, but that she was not offered employment because she does not have a GED and English language skills. The file does not contain a response from the respondent (carrier).

### DECISION

Affirmed.

The claimant testified that she sustained repetitive trauma injuries to her wrists, elbows, shoulders, and neck from using improper scissors while employed as a seam operator and that she has had conservative treatment for her injuries. She stated that her treating doctor, Dr. N, told her that she cannot return to work as a machine operator but that she can perform light work. She also acknowledged that a functional capacity evaluation (FCE) obtained by (Dr. S) determined that she could work at the sedentary level. Dr. S's October 19, 1999, report concerning the FCE stated that symptom exaggeration was present, along with inappropriate illness behavior and submaximal efforts during testing. He further reported that the claimant indicated she has been unable to find suitable work and "is seeking some method of being declared totally disabled." The claimant denied having made this statement to Dr. S. She further testified that she made "21, 25" job contacts during the March 8 through July 7, 2000, qualifying period; that she sought jobs in shops, restaurants, and plants and felt she could perform clearing jobs in such establishments were any offered; that she searched for employment for four hours on Mondays, Wednesdays, and Fridays; and that they all said "there's nothing" and would not give her applications. She also said that no jobs were offered because she does not have a GED and 80% English language ability.

The claimant also indicated that although she contacted the Texas Rehabilitation Commission (TRC), that agency could not assist her because her doctor had not released her for employment. A TRC communication dated July 6, 2000, states that the claimant obtained a doctor's work statement indicating that she may not return to work at this time. The claimant introduced a July 6, 2000, "Work Statement" signed by Dr. N stating that she "may not resume work." She also introduced an Application for Supplemental Income Benefits (TWCC-52) reflecting that she made 20 job contacts between March 15 and May 30, 2000. The form contained no names and phone numbers of persons contacted, described the jobs applied for as "any light duty," and had checked the "not hiring" block for each employer and the "no" block for applications or resumes filed. The claimant also

introduced a separate list of 28 businesses, some of which were duplicates of businesses listed on her TWCC-52. This list simply provided dates and the names and addresses of various businesses.

The parties stipulated that the claimant's impairment rating was 16% and that she did not commute any portion of her impairment income benefits. Although not stipulated, the parties' presentations treated the qualifying period for the 10th quarter as having begun on March 8, 2000, and having ended on July 7, 2000. Not appealed is the hearing officer's finding that the claimant's unemployment during "the filing [sic] period" is a direct result of her impairment. The only issue in dispute on appeal is the statutory criterion that the claimant have attempted in good faith to obtain employment commensurate with her ability to work. See Section 408.142(a). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) contains five provisions for the satisfaction of the "good faith attempt" requirement. Applicable to the evidence in this case is Rule 130.102(d)(5) which required the claimant to provide sufficient documentation, as described in subsection (e) of the rule, to show that she made a good faith effort to obtain employment. Rule 130.102(e) requires an injured employee who has not returned to work and who is able to return to work in any capacity to look for employment commensurate with his or her ability to work, every week of the qualifying period, and to document the job search efforts. This rule also contains a number of factors which the reviewing authority may consider in evaluating the job search effort including the number and types of jobs sought, applications or resumes which document the efforts, cooperation with the TRC, the amount of time spent attempting to find employment, any job search plan by the injured employee, and so on.

Although the hearing officer found that the claimant made at least one job contact each week of the qualifying period, he also found that she did not file an application for employment with any employer, that she did not have a plan for finding employment, and that she did not attempt in good faith to find employment commensurate with her ability to work, all findings which the claimant disputes on appeal.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged fact findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Kathleen C. Decker  
Appeals Judge