

APPEAL NO. 002495

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 October 5, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 1st through 15th quarters. In his appeal, the claimant contends that the hearing officer "erred in each and every finding of fact and conclusion of law rendered against Claimant." In its response to the claimant's appeal, the respondent (self-insured) urges affirmance. The self-insured did not appeal the hearing officer's determinations that the claimant satisfied the good faith requirement in the filing periods for the 2nd through 4th quarters and the 7th through 10th quarters and in the qualifying periods for the 11th, 13th, 14th, and 15th quarters. As a result, those determinations have become final pursuant to Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement on January 14, 1996, with an impairment rating of 18%; that the claimant did not commute his impairment income benefits; that the claimant's average weekly wage (AWW) is \$602.50; that the claimant's entitlement to 1st through 10th quarter SIBs is to be determined in accordance with the rules in effect prior to January 31, 1999, and that his entitlement to SIBs for the 11th through 15th quarters is to be determined in accordance with the rules that became effective January 31, 1999; that the 1st through 10th quarters ran from January 17, 1997, to July 15, 1999; that the filing periods for the 1st through 10th quarters ran from October 18, 1996, to April 15, 1999; that the 11th through 15th quarters ran from July 16, 1999, to October 12, 2000; that the qualifying periods for the 11th through 15th quarters ran from April 3, 1999, to June 30, 2000; that during the filing periods for the 1st and 5th quarters, the claimant earned no wages; that during the filing period for the 2nd through 4th and 6th through 10th quarters, the claimant earned less than 80% of his AWW; that during the qualifying periods for the 11th, 13th, 14th, and 15th quarters, the claimant earned less than 80% of his AWW; that the claimant is not entitled to SIBs for the 12th quarter because he earned more than 80% of his AWW in the 12th quarter qualifying period; and that the accrual date for the 15th quarter of SIBs is August 11, 2000. At issue on appeal are the hearing officer's determinations that the claimant did not satisfy the good faith requirement in the filing periods for the 1st, 5th, and 6th quarters, and that he did not establish that his unemployment and underemployment in the filing periods for the 1st through 10th quarters and the qualifying periods for the 11th, 13th, 14th, and 15th quarters were a direct result of his impairment from the compensable injury.

Initially, we will consider the hearing officer's good faith determinations. The evidence established that the claimant did not work during the filing periods for the 1st or

5th quarters and that he only worked one week during the 6th quarter filing period. The claimant did not present any evidence of having conducted a job search in the filing periods for the 1st, 5th, and 6th quarters and he likewise did not present any evidence to support a claim of total inability to work during those periods. Accordingly, we find no merit in the assertion that the hearing officer's determinations that the claimant did not make a good faith effort to look for work commensurate with his ability to work in the filing periods for the 1st, 5th, and 6th quarters are against the great weight of the evidence and affirm those determinations.

Next, we consider the hearing officer's determinations that the claimant did not satisfy his burden of proving that his unemployment or underemployment in the relevant filing periods and qualifying periods was a direct result of his impairment from the compensable injury. At one point in his testimony at the hearing, the claimant testified that he could not return to the job he was doing at the time of his injury because the employer would not take him back. However, at another point, he stated that he would not be able to perform the job he was doing at the time of his injury because he could not perform the required lifting and pushing with his right hand. The claimant further testified that his treating doctor, Dr. M, a chiropractor, had given him a 12-pound lifting restriction and advised him to limit his use of the right hand. In his answers to the self-insured's interrogatories, the claimant listed his restrictions as "I cannot lift, push, or pull more than 12 lbs"; however, in response to a question of what aspects of his preinjury job he contends he was unable to perform in the filing periods and qualifying periods, the claimant stated "I had no limitations and was fully able to work." At best, the claimant's testimony as to whether he had restrictions and the nature of those restrictions was contradictory. The claimant did not present evidence from Dr. M addressing the issue of the claimant's work restrictions. As the sole judge of the weight and credibility of the evidence under Section 410.165, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. The hearing officer did so by determining that the claimant did not sustain his burden of proving that his unemployment and underemployment in the filing periods and qualifying periods were a direct result of his impairment. That is, the hearing officer determined that the claimant's unemployment and underemployment were the result of factors other than his impairment. Our review of the record does not demonstrate that the hearing officer's direct result determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse those determinations on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge