

APPEAL NO. 011671
FILED JULY 30, 2001

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 010613, decided May 8, 2001. No hearing was held on remand. On remand, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter. In its appeal, the appellant (carrier) argues that the hearing officer's determinations that the claimant made a good faith job search in the qualifying period and that he is entitled to SIBs for the sixth quarter are against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant. The carrier did not appeal the determination that the claimant's unemployment was a direct result of his impairment from the compensable injury.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he had an impairment rating of 15% or more; that he did not commute his impairment income benefits; and that the sixth quarter of SIBs ran from December 13, 2000, to March 13, 2001, with a corresponding qualifying period of September 1 to November 30, 2000. The hearing officer determined that the claimant made a good faith search for employment during the qualifying period and, thus, that the claimant is entitled to SIBs for the sixth quarter.

The hearing officer did not err in determining that the claimant made a good faith effort to look for work commensurate with his ability to work in the qualifying period for the sixth quarter. The issue of whether the claimant satisfied the good faith requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) by conducting a job search was a question of fact for the hearing officer. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In arguing that the hearing officer's good faith determination is against the great weight of the evidence, the carrier emphasizes the same factors on appeal to cast doubt on the good faith nature of the claimant's job search efforts as it had emphasized at the hearing. The significance, if any, of those factors was a matter left to the hearing officer in determining whether the claimant had sustained his burden of proving good faith. The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the

claimant and she was acting within her province as the fact finder in so doing. Our review of the record does not demonstrate that the hearing officer's determination that the claimant made a good faith effort to look for work during the qualifying period is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination, or the determination that the claimant is entitled to SIBs for the sixth quarter, on appeal. Cain; Pool.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge