

APPEAL NO. 011791
FILED SEPTEMBER 18, 2001

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 June 28, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first through fourth quarters. The claimant appealed, arguing that she was unable to work during the relevant filing periods, and that her 30 job searches during the filing periods were a good faith effort to seek employment. The respondent (carrier) replied, urging that the hearing officer's determination be affirmed.

DECISION

Affirmed.

The hearing officer correctly recognized and applied the "old" SIBs rules to this case. 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 employee's 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. We have noted that good faith is an intangible and abstract quality with no technical meaning or statutory definition. It encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and inner spirit and, therefore, may not be determined by his protestations alone. Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, citing BLACK'S LAW DICTIONARY (6th ed. 1990). Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994.

Whether, during the four filing periods in issue, the claimant made good faith efforts to obtain employment commensurate with her ability to work presented the hearing officer with a question of fact to resolve. 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 (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer indicates in his discussion of the evidence that the claimant had some ability to work but failed to make a good faith effort to seek employment. The hearing officer could properly conclude from the evidence before him that, in the opinion of one doctor, the claimant was able to return to work and that the approximately 30 job searches in a 45-week period did not, under the circumstances, amount to a good faith effort to seek employment. The Appeals Panel, an appellate-reviewing tribunal, will not disturb the challenged factual 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**WILLIAM ROBERT PARNELL
8144 WALNUT HILL
DALLAS, TEXAS 75231.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge