

APPEAL NO. 001770

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 July 19, 2000, in _____, Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter. Claimant appealed, contending that he sought work during every week of the qualifying period and that he acted in good faith. Respondent (carrier) responded that the Appeals Panel should affirm the decision and order. The direct result determination in claimant's favor was not appealed.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he is not entitled to SIBs for the fourth quarter. Claimant asserts that the overwhelming evidence shows that he made a weekly job search. Claimant contends that the hearing officer should not have believed the report regarding verification of his job searches because the verification contacts took place weeks or months after his job searches. The applicable law and our standard of review are set forth in Texas Workers' Compensation Commission Appeal No. 000810, decided June 1, 2000.

The hearing officer summarized the facts in his decision. It is undisputed that claimant had some ability to work and that he acted to document a weekly job search. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 30.102(d)(5) (Rule 130.102(d)(5)). There was testimony that claimant made over 60 job searches during the qualifying period. However, the hearing officer determined that claimant did not meet his burden to prove he made a good faith effort to look for work commensurate with his ability to work. The hearing officer noted that claimant would go to the mall and contact one business regarding a job, then return the next day to contact another in the same mall or area. Claimant said he did this because he was told he had to look for work every day. The hearing officer noted discrepancies regarding whether certain job searches were actually made during the qualifying period. The hearing officer stated that he did not find claimant's testimony and documentation to be credible.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer 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). In this case, the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge