

APPEAL NO. 950307

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001, *et seq.* (1989 Act). On December 6, 1994, a contested case hearing was convened in (city), Texas, with (hearing officer) presiding. At issue was whether the appellant, (claimant), who is the claimant, was eligible for supplemental income benefits (SIBS) for the seventh quarter. Claimant had been injured on (date of injury), while employed by (employer); he had been assigned a 16% impairment rating (IR), benefits for which had not been commuted to a lump sum. The quarter under consideration was July 31, 1994, through October 29, 1994, and the preceding quarter was the pertinent period of time from which facts concerning a good faith job search were reviewed.

The hearing officer determined claimant had not made a good faith search for employment commensurate with his ability to work during the period under consideration, and that he was not eligible for SIBS for the seventh quarter.

The claimant has appealed, arguing that his doctor has said that he could not work and that he should not have to go against his own doctor's advice. No response was filed by the carrier.

DECISION

We affirm.

We note that claimant's theory on appeal, that he should not have to search for employment, is directly contrary to his posture during the hearing, in which he contended that he had actually searched in good faith for employment and was willing to accept any type of work, except heavy work.

Claimant testified that his doctor, (Dr. H), whom he stated he had last seen in December 1993, had released him to light duty. He said that he had been in therapy and rehabilitation but had to drop out before completing it (in 1993). Claimant testified that his employer had offered him a job in 1994 but that he did not accept it because he would have had to get up and down a lot and lift for 10 hours a day. Claimant testified, however, that his employer was willing to offer him light duty subject to approval from his doctor. The medical evidence included medical reports (TWCC-64) filed by Dr. H for visits on January 17 and June 13, 1994. These records reflect treatment only with analgesics, yet state a prognosis of "undetermined" for a lumbosacral strain. These reports contain the notation "unable" in answer to anticipated dates of return to work.

Claimant testified that he was 40 years old and had a "G.E.D." high school equivalency. For the period of time under consideration, claimant's application for SIBS indicated he had not made a job search. However, claimant testified, essentially, that he had placed five applications. Copies of some applications were also entered into evidence. He testified generally that he had called some places on the telephone two months before

the hearing. The hearing officer questioned claimant at length about what he thought he could do, and claimant agreed that there were jobs he felt he could do in the (city) area, including cashiering or sales clerk work. His explanation for not having placed more than two applications in June was that he did not have money for gas to search more extensively for employment. In response to the hearing officer's questions, claimant agreed that he had a telephone but also stated that he had not called anyone for employment in April, May and June 1994.

A doctor for the carrier, (Dr. K), examined claimant on March 23, 1994, described his injury as a low back strain, and commented that there seemed to be no objective basis for his continued complaints of pain. He stated that claimant sat through a 35-minute interview without discomfort, although he stated to Dr. K that he could not sit for more than 15 minutes. It was Dr. K's opinion that claimant had the physical capability of returning to some type of work.

Claimant indicated that he was waiting for his doctor to release him so he could go back to his employer. Claimant's position was that he preferred to return to his old employer because he had worked for the company for 18 years and would have only two more years to go for retirement, and because there were good benefits. He stated that he was looking for other employment because the insurance carrier was forcing him to do so.

The job search requirement for SIBS is set out in Section 408.142(a)(4). A claimant must demonstrate that he:

* * * *

(4)has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Section 408.143 makes clear that after initial eligibility is found, the job search requirement must be met on a quarterly basis.

Whether a claimant had made a good faith search for employment, commensurate with his physical ability to work, is a fact question for the hearing officer. He is not necessarily bound by medical evidence or reports that simply state that a person is "unable" to work without more explanation or assessment of the abilities of an injured worker. Claimant testified that he felt he was able to perform various types of tasks. When asked by the hearing officer regarding his efforts to search for those types of employment, claimant's responses could fairly be characterized as somewhat vague and nonresponsive, eventually falling back on the contention that finances did not permit a more extensive search. As we review the record here, it appears that the hearing officer's conclusion that, for his seventh quarter of potential eligibility for SIBS, claimant had not made a good faith effort to search for employment, is supported by sufficient evidence.

We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge