

APPEAL NO. 980079

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 21, 1997, a contested case hearing was held. He (hearing officer) determined that appellant (claimant) did not attempt in good faith to obtain employment commensurate with his ability and denied supplemental income benefits (SIBS) for the 16th compensable quarter. Claimant asserts that he made 50 job contacts but cannot do construction work as he had in the past; he believes he acted in good faith. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for. (employer) on _____, when he was injured. He testified that he hurt his back when lifting a roll of fencing. The parties stipulated that he has a 19% impairment rating, has not commuted benefits, and the 16th quarter began on August 14, 1997. There was no dispute that claimant could do sedentary to light work, but could not return to heavy labor or construction work, his line of work at the time he was injured.

Claimant's application for SIBS showed 43 job contacts within the filing period which began on May 15, 1997. The primary focus of the hearing was that job contacts with certain employers, such as Labor Force and (BT) required repeated contacts because job openings were continually occurring. Claimant applied at these places but did not indicate that he ever returned or recontacted them about openings. BT was described as an organization that specifically hired people with disabilities to do "pack and sort" work.

(Ms. B) testified for the carrier that she provided the BT lead to claimant and had checked the type work done there with claimant's treating doctor to be sure it met claimant's ability. She said that initially there were openings at BT but that claimant did not apply for several weeks after she contacted him and when he applied there were none. However, more openings could be expected if a person interested in working continued inquiring at that organization. Ms. B also stated that claimant did not contact the Texas Workforce Commission about job leads for work he could do.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. Section 408.143 requires that the attempt to find work be made in good faith in order to be entitled to SIBS. The question of good faith is one for the hearing officer to decide. It does not depend on the number of job contacts made (See Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995, which denied SIBS even though either 32 or 40 job contacts were made). The hearing officer made a specific finding of fact that claimant's testimony was "not persuasive." Credibility is a matter for the hearing officer to consider and weigh. In a factual determination such as

"good faith," it can be an overriding factor. The determination that claimant did not show that he acted in good faith in attempting to find work is sufficiently supported by the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Christopher L. Rhodes
Appeals Judge