

APPEAL NO. 980188  
FILED MARCH 18, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Two contested case hearings were held on December 29, 1997 with hearing officer. With respect to the issues before her in the morning hearing, the hearing officer determined that the appellant (claimant) did not have good cause for his failure to attend the September 30, 1997, hearing and that he is not entitled to supplemental income benefits (SIBS) for the sixth quarter. The hearing officer resolved the issue in the second hearing by determining that the claimant was not entitled to seventh quarter SIBS. In his appeals, the claimant essentially challenges each of those determinations as being against the great weight and preponderance of the evidence. In its responses, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Because of the similarities in the testimony and evidence in the records from the two hearings, we will consider both of the claimant's appeals in a single decision. The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that he was assigned an impairment rating of 18% for his compensable injury; that he did not commute his impairment income benefits; that the sixth quarter of SIBS ran from June 4 to September 2, 1997, with a filing period of March 5 to June 3, 1997; that the seventh quarter of SIBS ran from September 3 to December 2, 1997, with a filing period of June 4 to September 2, 1997; that the claimant was able to work at the light-duty level during the relevant filing periods; and that the claimant did not earn any wages during the filing period for the sixth quarter.

The claimant testified that at the time of his compensable injury he was employed as an auto mechanic with (employer) and that he had been so employed for almost 20 years. The claimant testified that, during the filing period for the sixth quarter, he attended night classes at a university, pursuing a 2-year degree in business administration and also attended computer classes at an adult literacy center. In addition, he sought the assistance of the (TRC), and city and county workforce commissions. He also stated that he was registered with the Texas Workforce Commission (TWC), where he regularly checked the computer job listings and was sometimes given a job referral. In addition, the claimant stated that he had an application on file with the (business 1), that he regularly checked the job listings with the (City 1) and applied for the jobs he believes were within his restrictions, and that he applied for teacher's aide and substitute teaching positions with the (BISD). Finally, he stated that he applied with (business 2) and (business 3), which were job referrals he received from the carrier's vocational rehabilitation specialist.

The claimant testified that in the filing period for the seventh quarter, he continued to attend classes at both the university and the literacy center. He stated that the TWC referred him to a company and that he obtained employment renting television satellites. He stated that the job required him to hand out information at flea markets. He stated that he was to be paid a \$30.00 commission for each satellite he rented out. He testified that he had earned only one commission in the filing period and that he stopped working for that employer because he had been told when he started working for that employer that he would eventually begin answering the telephone part time at a \$200 per month salary, but that position was given to the owners's 16-year-old son. He stated that he also applied for work-study positions at the university where he is enrolled as a student but his applications were not successful. Lastly, he stated that he continued to check with the employers with whom he had previously applied that had recurring openings such as the City, the school district, and some state agencies.

At issue in this case is claimant's entitlement to SIBS in the sixth and seventh quarters. The question of whether the claimant has made the required good faith effort to seek employment commensurate with his ability to work in the relevant filing periods is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. Section 410.165(a) provides that the hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence. As such, it is for the hearing officer to resolve conflicts and inconsistencies in the evidence. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The hearing officer determined that the claimant had not made a good faith job search during the filing periods for the sixth and seventh quarters. The hearing officer commended the claimant for his efforts to continue his education and to improve his employment skills; however, she also noted that his efforts to obtain employment in the filing periods were limited and that he "continued to pursue commission-based employment in questionable ventures that have previously proven fruitless." In Texas Workers' Compensation Commission Appeal No. 941741, decided February 9, 1995, we noted that "[e]vidence bearing upon whether a claimant has demonstrated good faith can encompass the manner in which a job search is undertaken with respect to timing, forethought, and diligence; the extent to which these are demonstrated involve questions of fact for the hearing officer." We have also previously stated that no specific number of job contacts must be made in the filing period in order to establish good faith. Texas Workers' Compensation Commission Appeal No. 941160, decided October 12, 1994. Rather, the hearing officer is permitted to consider all of the factors related to the claimant's efforts to obtain employment and his pursuit of continuing education in order to decide whether those factors support a determination that the claimant has satisfied the good faith requirement. Our review of the record does not indicate that the hearing officer's determinations that the claimant's efforts in the filing periods did not rise to the level of a good faith job search are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for disturbing the hearing officer's

decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The fact that the evidence could have allowed different inferences than those drawn by the hearing officer, which could have supported a different result, does not provide a sufficient basis for our reversing the hearing officer's decision on appeal. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992.

The questions of whether the claimant has shown that his unemployment in the sixth quarter filing period and his underemployment in the seventh quarter filing period were a direct result of his impairment were also questions of fact for the hearing officer. The hearing officer was acting within her province as the fact finder in determining that the claimant's unemployment and underemployment resulted from factors other than his impairment. Nothing in our review of the record suggests that her determinations in that regard are so contrary to the great weight and preponderance of the evidence as to compel reversal on appeal. Pool, *supra*; Cain, *supra*.

Finally, we briefly consider the hearing officer's determination that the claimant did not establish good cause for his failure to attend the September 30, 1997, hearing. The claimant testified that he received the notice of the hearing but he forgot about it. In addition, he stated that several days before the September hearing he called the Texas Workers' Compensation Commission (Commission) and asked when his next "meeting" was scheduled. He stated that, at that time, he was advised of the benefit review conference concerning the seventh quarter of SIBS but was not told about the hearing scheduled for several days later on the sixth quarter. Even accepting as true the claimant's assertions, we cannot agree that the hearing officer abused her discretion in determining that he did not establish good cause for his failure to appear at the hearing.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney  
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.  
Chief Appeals Judge

Alan C. Ernst  
Appeals Judge