APPEAL NO. 980245
FILED MARCH 19, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 5, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. With regard to the issues at the CCH, he determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the eighth quarter. The claimant appeals, seeks a reversal of the decision and argues that during the filing period for the eighth quarter of SIBS he attempted in good faith to obtain employment commensurate with his ability to work. The respondent (self-insured) responds and seeks an affirmance of the decision. The hearing officer made a finding of fact that during the filing period the claimant had returned to work earning less than 80% of his average weekly wage as a direct result of his impairment. That finding is not appealed and, therefore, became final by operation of law. Section 410.169.

DECISION

We affirm.

The hearing officer fairly summarizes the facts in the decision and we adopt his rendition of the facts. We discuss only those facts necessary to our decision. The parties stipulated that the claimant sustained a compensable back injury on _____, that his impairment rating is 15% or more and that the filing period was from June 30 to September 28, 1997. The disputed SIBS criterion is whether the employee, the claimant, during the filing period, "attempted in good faith to obtain employment commensurate with the employee's ability to work." Section 408.142(a)(4); *see also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104(a)(2) (Rule 130.104(a)(2)).

There is no dispute that during the filing period the claimant's treating doctor, Dr. M, placed him on a 10-pound lifting restriction. The claimant testified at the CCH that his preinjury employment was as a high school coach but he is also certified to teach history, health, and physical education. He said that during the filing period he worked for four weeks assisting a farmer doing errands and paperwork, working four hours per day each weekday and earning $160.00 per week. He said his only attempts to obtain employment during the filing period were discussions with other coaches with whom he was acquainted. A signed statement from one of the coaches, Mr. Y, indicated that the claimant could not fulfill the physical demands of coaching positions.

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 one's own mind and

inner spirit and, therefore, may not be determined by one's protestations alone. Texas Workers' Compensation Commission Appeal No. 950364, decided April 26, 1995. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. There is no specific number of job contacts which make an employee's efforts in good faith. Texas Workers' Compensation Commission Appeal No. 960107, decided February 23, 1996.

The claimant argues on appeal that his informal, limited job search within his preinjury field should suffice as an attempt in good faith to obtain employment commensurate with his ability to work. We disagree. "Commensurate with the employee's ability to work" does not mean that an employee's job search is in good faith if it only includes looking for employment within his post-injury physical limitations but only in his preinjury field. The 1989 Act anticipates that, in many instances, employees will have to seek employment different from that which they were physically capable of prior to their compensable injury. The inability to return to one's preinjury employment is only of marginal relevance "because the SIBS statute arguably contemplates that the claimant will not be able to return to the prior employment and wage level, because it compensates for unemployment or underemployment." Texas Workers' Compensation Commission Appeal No. 941275, decided November 3, 1994; *see also* Texas Workers' Compensation Commission Appeal No. 94882, decided August 18, 1994. The claimant also argues that his part-time employment during the filing period was good faith in and of itself. While such employment may be considered by the hearing officer, it is not in and of itself determinative on the issue of whether an employee attempted in good faith to obtain employment.

The contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse that determination if we find that it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision herein is not against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and, therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge