APPEAL NO. 980274
FILED MARCH 27, 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 was held on January 13, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. With respect to the single issue before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the eighth quarter. In its appeal, the appellant (carrier) argues that the hearing officer's decision is not supported by sufficient evidence and asks that we render a decision in its favor. The appeals file does not contain a response to the appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on February 20, 1995, with an impairment rating of 15%; that she did not commute her impairment income benefits; and that the eighth quarter of SIBS ran from October 2 to December 31, 1997, with a filing period of July 4 to October 1, 1997. In an October 22, 1997, letter, Dr. H, the claimant's treating doctor stated that the claimant was at a sedentary work level in accordance with two previous functional capacity evaluations (FCE).

The claimant testified that she completed applications with the 40 employers identified on her Statement of Employment Status (TWCC-52) and the pages attached thereto. She stated that she contacted other employers in the filing period but did not list the employers where she did not complete an application, noting that when she contacted some of the employers who were advertising in the paper the position had already been filled. She stated that five of the 40 employers where she applied were identified from the newspaper and that the others were employers where she walked in to see if they were hiring. She acknowledged that many of the employers she contacted were retail stores located in malls and shopping centers. She explained that she looked for work with retail stores because she believed she could do the work and she thought they would be hiring for the holidays. The claimant acknowledged that she was in the third trimester of her pregnancy during the filing period; however, she stated that her pregnancy did not change her restrictions and that she was able to wear her regular clothing throughout her pregnancy. She testified that she was admitted to the hospital on September 30, 1997, that labor was induced on October 1st and that she delivered her baby that day. On cross-examination, the claimant stated that she could not recall the names of the other employers she contacted with whom she did not complete applications. In addition, she stated that she did not know the dates she completed her applications; however, she stated that she generally looked for work two days per week during the filing period. She testified that she did not complete all of her applications at a mall or shopping center on one day; rather, she went back to the same locations more than once during the filing period.

In this instance, the hearing officer determined that the claimant made a good faith effort to look for work in the filing period. That question presented an issue of fact for the hearing officer to resolve. In its appeal, the carrier argues that the claimant's "minimal" job search efforts do not rise to the level of a good faith search. The carrier cites several cases where we have acknowledged that the hearing officer may consider the manner in which a job search is undertaken "with respect to timing, forethought and diligence." *See* Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996. In addition, the carrier cites an unpublished decision, Texas Workers' Compensation Commission Appeal No. 961276, decided August 15, 1996, and argues that the hearing officer in this case improperly emphasizes the number of contacts made rather than focusing on the amount of time actually spent looking for work during the filing period. Although Appeal No. 961276 identifies the amount of time spent searching for employment as a relevant factor for a hearing officer to consider in evaluating a claimant's job search efforts, that case also noted that the Appeals Panel would not "second guess" the finder of fact, which is exactly what the carrier is asking us to do here. After reviewing the hearing officer's decision and order, we find no support for the carrier's assertion that the hearing officer did not consider the relevant factors in making her determination that the claimant made a good faith search for employment commensurate with her ability to work in the filing period. Nothing in our review of the record demonstrates that that determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for reversing the determination 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).

Next, we consider the carrier's challenge to the hearing officer's direct result determination. We have consistently stated that a claimant need not establish that his or her impairment is the only cause of his or her unemployment or underemployment in order to satisfy the direct result criteria; rather, a claimant need only establish that his or her impairment is a cause of the unemployment or underemployment. Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996. In addition, we have previously noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment can be "sufficiently supported by evidence that an injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury." Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. In this instance, there is evidence in the FCEs and from Dr. H that the claimant can no longer reasonably perform the work she was doing at the time of her injury as a result of her impairment from the compensable injury. That evidence supports the hearing officer's direct result determination and we cannot agree that the determination is so contrary to the great weight and preponderance of the evidence as to compel a reversal on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge