

APPEAL NO. 980314
FILED MARCH 23, 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 23, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer.

With regard to the issues at the CCH, the hearing officer determines that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the fourth and fifth quarters and that he does not lose entitlement to SIBS because of any alleged failure to cooperate with the Texas Rehabilitation Commission. The claimant appeals the SIBS eligibility determinations, seeks a reversal of the decision and argues that it is contrary to the evidence. The self-insured responds and seeks an affirmance of the decision. Neither party appeals the loss of SIBS entitlement determination and, therefore, it became final by operation of law. Section 410.169 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(f) (Rule 142.16(f)).

DECISION

We affirm.

The parties stipulated that the claimant sustained a compensable back injury on _____, that his impairment rating is 15% or more, that the filing period for the fourth quarter of SIBS was from March 15 to June 13, 1997, and that the filing period for the fifth quarter of SIBS was from June 14 to September 12, 1997. The disputed SIBS criteria are whether the employee, the claimant, during the filing period, had "not returned to work or has returned to work earning less than 80% of the employee's average weekly wage as a direct result of the employee's impairment" and "attempted in good faith to obtain employment commensurate with the employee's ability to work." Sections 408.142(a)(2) and 408.142(a)(4); see Rule 130.104(a). The hearing officer finds, with respect to the filing periods in dispute, that the claimant's unemployment was not a direct result of his impairment, that he was able to work and that he did not attempt in good faith to obtain employment commensurate with his ability to work.

The claimant testified at the CCH that during the filing periods for the fourth and fifth quarters of SIBS he was under the care of his treating doctor, Dr. B, and that Dr. B instructed him not to work. Dr. B's February 28, 1997, Specific and Subsequent Medical Report (TWCC-64) noted that he "has returned to work," but the claimant denied being employed since the compensable injury. A September 18, 1997, functional capacity evaluation concluded that the claimant "met the light physical demand work level." The attachments to his Statement of Employment Status (TWCC-52) forms indicated that he spent 15 days of the 91-day filing period for the fourth quarter of SIBS looking for employment with 22 potential employers and spent nine days of the 91-day filing period for the fifth quarter of SIBS looking for employment with 15 potential employers. Those attachments also stated that none of the potential

employers he approached during the filing periods were hiring. The claimant testified that he sought work everyday during the filing periods but left his notes from his job search at home. He testified that during the filing period for the fourth quarter of SIBS he had interviews at a printing company and a cabinet manufacturer but was not hired. The hearing officer makes a finding of fact that the claimant was neither credible nor persuasive.

Whether an employee's unemployment during a SIBS filing period was a direct result of her impairment from the compensable injury is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. 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. 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 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 or manifestly 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:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge