APPEAL NO. 990505

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 9, 1999, a hearing was held. He (hearing officer) determined that respondent (claimant) is entitled to supplemental income benefits (SIBS) for the fourth compensable quarter. Appellant (carrier) asserts that several job contacts listed by claimant could not be verified, that claimant's job search "effectively" ended when she was hired to a part-time position; carrier also states that claimant did not meet the direct result test in that she was released to work as a speech therapist and self-limited her job search. Claimant replied that the decision should be affirmed and asked for a ruling on an objection to an exchange of evidence question--claimant's submission was timely as a response but not as an appeal so the relief sought will not be addressed.

DECISION

We affirm.

Claimant's education and training is as a speech pathologist. She did not testify as to how she was injured, but the parties stipulated that she sustained a compensable injury on _____, that she has a 20% impairment rating, that the fourth quarter began on August 18, 1998, and that during the filing period for that quarter claimant was underemployed.

With the quarter beginning on August 18, 1998, the filing period in question began, approximately, on May 20, 1998. Claimant's list of job contacts during this period numbers 42, with some contacts made more than once with the same employer during the filing period. The listed contacts cease on July 11, 1998, except for the two final listings on July 28, 1998. Claimant obtained a part-time position on July 18, 1998, for which she received $900.00 from that time to the end of the filing period, one month later.

Claimant testified that she took a position with (employer), which paid her $45.00 a visit to a patient totaling $900.00 for one month's work. She testified that she thought the job would be a salaried one rather than a payment per patient one and continued to look for work after taking it. She did not refuse any call from the (employer) during the filing period.

Claimant stated that she looked in the newspaper want ads every day. She called about jobs, and she called contacts she had made to see about jobs. She inquired of agencies that located jobs, but could not pay for their services. She testified that the carrier provided a Mr. J to help her with job leads, but she said that he came up with none. While carrier put forth evidence that Mr. J did find some leads, it did not identify any such leads found for claimant.

Claimant said she wanted to find a job paying approximately $50,000.00 a year because her prior work paid at least that much. She did not limit herself to only such jobs, however, as shown by the (employer) job taken and by her testimony that she inquired about jobs that only paid $10.00 an hour. Her list of job contacts does not indicate that she

self-limited the jobs she sought so as to require overturning the determination that claimant's underemployment was not a direct result of the impairment.

The direct result test was also questioned by carrier based on its assertion that claimant could return to the work she had done before the injury. There is a note by claimant's doctor, Dr. R, dated July 1, 1998, which says, "she is able to work as a speech therapist. Her restrictions are no lifting more than 20 lb. and no excessive bending." Claimant testified that she is a speech pathologist, not a speech therapist. She testified to working with patients who have various disabilities necessitating that the speech pathologist position the patient in order to receive speech therapy. She stated that this entails not only lifting more than 20 pounds but also bending. Claimant testified that while there are some patients who do not have such disabilities, a substantial number do, and to work with them does require lifting and bending beyond her limit. She added that in the limited number of calls she made for (employer) in the month she worked during the filing period, she had not had to position a patient so as to exceed her limitations.

The medical evidence in the record also contains a note from Dr. R dated March 9, 1998, in which he states that claimant is a speech pathologist "which requires lifting patients and lifting up to 50 pounds otherwise." In addition, Dr. R had set forth claimant's limitations in other medical documents predating the July 15, 1998, note, which stated that claimant's restrictions are "no overhead work, lifting over 20 pounds, limited bending at the waist." The medical records show that claimant had cervical surgery on April 4, 1996, and continues to have facet injections in the lumbar area.

A fact finder may consider all of a physician's medical records in evidence in determining what that physician is stating relative to a matter such as claimant's ability to do a particular job. In this case the hearing officer could credit Dr. R's consistency in setting claimant's restrictions at 20 pounds lifting and his limitations on bending. The hearing officer could choose not to give significant weight to the conclusory statement that claimant is able to work as a "speech therapist." *See* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997, which said that while a fact finder may choose to give weight to a medical opinion that does not provide any explanation for its assertion, the fact finder should generally give more weight to medical opinion which states a basis for its conclusions. *See also* Gregory v. Texas Employers Insurance Association, 530 S.W.2d 105 (Tex. 1975), which said that deductions of an expert are "never binding" on the fact finder. The determination that claimant's underemployment is a direct result of the impairment is sufficiently supported by the evidence that claimant cannot return to her past employment, without accommodations, and that she has significant effects from that injury and impairment.

While the carrier brought forth evidence indicating that some of claimant's contacts could not be verified, that some had no record of a contact, that some did not return calls by carrier, and that some were confirmed, this evidence was for the hearing officer to consider. Similarly, while claimant's listed attempts to find work after obtaining part-time work only numbered two contacts on her application for SIBS, she did testify that she made other calls and contacts continuously until the end of the period. This too was a matter for

the hearing officer to weigh. With listed job contacts numbering approximately 40, even if there was some question in the hearing officer's mind as to some listings based on carrier's evidence, there would still remain a substantial number of job contacts plus the fact that claimant did obtain a part-time job for the final month of the filing period. The hearing officer found claimant's testimony credible. The evidence sufficiently supports the hearing officer's determination that claimant attempted in good faith to find work commensurate with her ability.

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

_____
Dorian E. Ramirez
Appeals Judge