APPEAL NO. 011824
FILED SEPTEMBER 11, 2001

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 July 12, 2001. The hearing officer held that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for her fifth and sixth quarters of eligibility. He held that her underemployment was the direct result of her impairment. He also found that she fulfilled the good faith job search criteria.

The appellant (carrier) appeals and argues that because she can do similar work at the sedentary level, similar to the job she had at the time of her injury, it cannot be said that her underemployment directly resulted from her impairment. The carrier also argued that she did not make a good faith search if the quality of her search were analyzed. The claimant responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in holding that the claimant was entitled to SIBs. The hearing officer has summarized pertinent facts. She worked a part-time job during the fifth quarter qualifying period and then, through her search efforts, received a second part-time job for the sixth quarter. The combined wage was less than her preinjury average weekly wage, and hours were somewhat flexible in each position, although the combined hours could be as much as 30 hours a week. The claimant testified she continued to look for full-time jobs, although there was some evidence that her treating doctor limited her to six hours a day. A search for employment was documented for every week of the qualifying period.

Regarding the point that the claimant is classified at a similar duty level as her preinjury job, the Appeals Panel has held that this is not dispositive of the direct result criteria. As stated in Texas Workers' Compensation Commission Appeal No. 982993, decided February 5, 1999 we stated:

> When a claimant has work restrictions imposed after a compensable injury, this, in effect, will narrow the field regarding the number and types of jobs available to that claimant. A claimant who was injured at a sedentary job should not have a more difficult time proving direct result than a claimant who sustained an injury while doing a heavy job. Under the facts of this case, the focus should not be solely on what type of job the claimant had before or on whether the claimant is physically able to perform that old job. Instead, one must consider (1) why was the claimant unemployed during the filing period and (2) did the impairment affect or impact the claimant's unemployment or underemployment situation.

The essence of the appeal is that the carrier disagrees with the weight that the hearing officer gave the evidence. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this case, we find sufficient support for the hearing officer's decision and affirm the decision and order.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

C.T. CORPORATION SYSTEMS
1021 MAIN STREET, SUITE 1150
HOUSTON, TEXAS 77010.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge