APPEAL NO. 011837
FILED SEPTEMBER 10, 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 17, 2001. The hearing officer determined that the appellant's (claimant) injury did not extend to bilateral carpal tunnel syndrome, depression, migraines, her right elbow, or radiculopathy. She further found that the claimant did not make a good faith search for employment commensurate with her ability to work and therefore was not entitled to supplemental income benefits (SIBs) for the 15th quarter.

The claimant has appealed, arguing the weight of evidence that she believes supports extent of injury. She further argues that probative evidence supports her inability to work during the qualifying period. The respondent (carrier) responds that the decision is not so against the evidence as to be reversible.

DECISION

We affirm the hearing officer decision

EXTENT OF INJURY

The hearing officer did not err in finding that the claimant's cervical and lumbar spine injuries did not extend to other regions as claimed. The evidence was in conflict. The hearing officer is the sole judge of the weight and credibility, materiality, and relevance of the evidence. Section 410.165(a). As such, the hearing officer may believe some evidence and reject other evidence. The decision is sufficiently supported by the record in this case, including evidence of other activities undertaken in the seven years since the original injury that could lead to some of the claimed conditions.

SIBS

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the 15th quarter. The qualifying period ran from January 20 through April 18, 2001. The 1989 Act has, since its effective date, required a job search commensurate with the ability to work in order to qualify for SIBs. It is the exception to this requirement that must be proven. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) lists the actions that constitute a good faith requirement to search for employment; inability to work in any capacity must be proven through a narrative from the doctor stating why the impairment precludes any ability to work. Rule 130.102(d)(4). There must be no other records that "show" an ability to work.

The hearing officer has properly applied the rule to the facts. 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.). We cannot agree that this is the case here, on either issue appealed, and therefore affirm the decision and order.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

C.T. CORPORATION SYSTEMS
350 N. ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge