APPEAL NO. 032908
FILED DECEMBER 30, 2003

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 October 8, 2003. The hearing officer determined that the appellant/cross-respondent was not entitled to supplemental income benefits (SIBs) for the second and third quarters because her underemployment during the relevant qualifying periods was not a direct result of the compensable impairment.

The claimant appeals, contending that she was unable to return to her preinjury employment and that she has suffered a serious injury with lasting effects. The respondent/cross-appellant (carrier) appealed the hearing officer's determination that the claimant had made a good faith effort to obtain employment commensurate with her ability to work. Neither party responded to the others' appeal.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the qualifying periods were from October 10, 2002, through January 8, 2003, for the second quarter, and January 9 through April 9, 2003, for the third quarter; that the claimant had a 24% impairment rating; and that impairment income benefits were not commuted.

The claimant was a dental assistant or "dental auxillary monitor," and sustained a compensable left rotator cuff injury in a slip and fall on some ice while taking out some trash. The hearing officer summarizes the medical evidence in some detail. There is a substantial difference of medical opinion on the claimant's ability to work ranging from a total inability to work to a release to return to work without any restrictions.

The fact is, however, that the claimant returned to work for Dr. P a different dental provider, apparently some time in early 2002, "working full time basically" in a position similar to, although more slow paced, than her preinjury job. The claimant testified that she worked for Dr. P for about eight months and Claimant's Exhibit No. 1 indicates that she worked for Dr. P until the end of October 2002. The claimant testified that she was laid off at that time, with others, because of "a general downturn in business" which had "nothing to do with [her] injury." Subsequently the claimant made a number of job contacts, succeeded in getting some temporary employment through a temporary employment agency during the relevant qualifying periods, and is currently employed as a floral designer in some seasonal employment, which may, or may not, lead to a permanent position.

The hearing officer commented that the claimant "worked at several dental hygiene assistant jobs during the [second quarter] qualifying period" and had produced evidence of extensive job searches during the qualifying periods for the disputed quarters." The hearing officer found that the claimant's "work during the qualifying periods . . . was relatively equal to her ability to work at that time" (Rule 130.102(d)(1)) and that she had made a good faith effort to obtain employment commensurate with her ability to work. The hearing officer did not expound on his rationale regarding the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1) other than to comment that the claimant has not proved "that her reduced ability to work is a direct result of her impairment." Although the claimant cites the general proposition that the direct result requirement may be met by showing a serious injury with lasting effects and that the claimant "could not reasonably perform the type of work being done at the time of the injury," in this case the evidence was that the claimant had returned to a position substantially similar to her preinjury position and the reason she left that position was because of a layoff rather than her injury or an inability to do the job because of her compensable injury.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not wrong as a matter of law and are not 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).

We affirm the hearing officer's decision and order.

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

LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

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Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Edward Vilano
Appeals Judge