APPEAL NO. 000692

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 March 2, 2000. The hearing officer determined that the appellant (claimant) had disability from August 16 through December 17, 1999, as a result of the compensable injury sustained on _____; that the employer made a bona fide offer of employment to claimant entitling respondent (carrier) to adjust the post-injury weekly earnings from July 6, 1999, through February 3, 2000; and that Dr. G was the claimant=s initial choice of treating doctor and the Texas Workers= Compensation Commission had no discretion in approving Dr. G as an alternate treating doctor. The claimant appealed the determination that the employer made a bona fide offer of employment to the claimant entitling the carrier to adjust post-injury weekly earnings from July 6, 1999, through February 3, 2000; urged that that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; and requested that the Appeals Panel reverse that determination of the hearing officer and render a decision in his favor on that issue. The carrier responded, urged that the evidence is sufficient to support the appealed determination of the hearing officer, and requested that it be affirmed. The unappealed determinations of the hearing officer have become final under the provisions of Section 410.169.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence pertaining to the appealed issue will be included in this decision. Apparently, the carrier provided the employer with a sample letter to be used to make an offer of employment. The employer used the sample letter and in handwriting provided additional information. The letter states that the claimant was released to return to work with restrictions effective July 2, 1999; that he was offered the position of a security guard with three listed duties and responsibilities; that it was determined that the position was in accordance with restrictions listed by (clinic); that, if necessary, the position will be modified to conform to the physical limitations or restrictions given by the clinic; that the expected duration of the job was from July 2 to July 15, 1999, or until he was given a full release; that the wages were $9.50 an hour; and that the position was at the address of the employer. The claimant testified that he accepted the job. Both the claimant and Mr. A, the general manager of the employer, testified that after the claimant=s restrictions became more restrictive, the job was changed so that the claimant could perform the duties of a security guard sitting in his car. The claimant testified that in August 1999 he quit the job because he could not tolerate the heat and the pain that were related to sitting in the car. The general manager said that the claimant was terminated because of not showing up for work without advising that he would not be at work and that had the claimant not been terminated, the employer would have abided with any restrictions given by a doctor.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness=s testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness=s testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref=d n.r.e.); Texas Workers= Compensation Commission Appeal No. 93426, decided July 5, 1993. The hearing officer resolved conflicts in the testimony related to the issue of bona fide offer against the claimant. In addition, she stated that the letter dated July 2, 1999, contained information in conformity with the provisions in Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 129.5 (Rule 129.5), concerning duties, duration of the position, salary, and geographic location. She also stated that the claimant accepted the job; that originally the restrictions were complied with; and that when the restrictions were changed, the job requirements were changed to comply with those restrictions. She wrote that the carrier=s evidence was sufficient to prove by a preponderance of the evidence that it made a bona fide offer of employment. The appealed determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and are affirmed. In re King=s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge