

## APPEAL NO. 001306

On May 3, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that appellant (claimant) has not had disability and that employer tendered a bona fide offer of employment to claimant. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. Respondent (carrier) requests that the hearing officer's decision be affirmed. Claimant attached numerous documents to her request for appeal, some of which were made a part of the CCH record and some of which were not offered at the CCH. Those documents attached to claimant's appeal that were not made a part of the CCH record are not considered on appeal. Section 410.203. None of the documents meet the requirements for newly discovered evidence.

### DECISION

Affirmed.

It is undisputed that claimant sustained a compensable injury on \_\_\_\_\_. The issues before the hearing officer were disability and bona fide offer of employment. Section 401.011(16) defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." During the time period relevant to this case, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.5 (Rule 129.5) provided criteria regarding bona fide offers of employment.

Claimant said that on \_\_\_\_\_, a roller on a fabric machine she was operating pressed down on her left hand. Claimant's employer sent her to Dr. T on \_\_\_\_\_, and he diagnosed claimant as having a contusion and strain of her left hand and wrist. Dr. T prescribed a left wrist brace and released claimant to return to work that day with a restriction of minimal use of her left hand.

DH, employer's personnel manager, testified that employer provided claimant a light-duty job operating a plastic bag machine that was consistent with the work restriction provided by Dr. T and that did not require much use of her left hand. DH said that claimant worked the light-duty job without complaint in December 1998. DH said that toward the end of December 1998, claimant stopped showing up for work without explanation and employer assumed that she had quit her job. DH said that if claimant had not walked off the job, the light-duty job would have been continuously available to her.

Claimant saw Dr. T several more times in December 1998, and on December 17, 1998, Dr. T added a diagnosis of early carpal tunnel syndrome (CTS) of the left wrist, but continued to allow claimant to work with limited use of her left hand.

Claimant said that she worked in the position offered to her by employer until December 31, 1998. She said that she was unable to continue to perform that job because it required heavy lifting and she was in pain. She also said that she reinjured her left hand at work on \_\_\_\_\_. DH said that the first time he heard of a \_\_\_\_\_ injury was at the CCH. Claimant said that in January 1999 she went to Mexico for two weeks and was treated there by a doctor. She indicated in her responses to interrogatories that employer gave her permission to leave work and go to Mexico and that upon her return she told employer that she was going to see the doctor.

In February 1999, claimant began treating with Dr. S, who noted that claimant was complaining of left shoulder, left elbow, and left hand pain. Dr. S reported that it was anticipated that claimant could return to limited work on May 3, 1999, and full-time work on June 3, 1999. Dr. L, reported that x-rays of claimant's left shoulder, left elbow, and left wrist were essentially unremarkable. Claimant was also seen by Dr. F, in February 1999 and he diagnosed left CTS. Dr. E also saw claimant in February 1999 and he noted that claimant injured the back of her left hand on \_\_\_\_\_, and bruised a finger on her left hand on \_\_\_\_\_.

Dr. K, who appears to be associated with Drs. F and S, wrote on May 24, 1999, that he recommended that claimant remain off work until March 10, 1999, and then on March 10, 1999, he recommended that claimant remain off work until March 24, 1999.

A March 1999 MRI of the left wrist showed extensor tenosynovitis of the third and fourth fingers. Dr. KO, reported in March 1999 that nerve conduction studies of claimant's upper extremities were relatively unremarkable. Dr. LA examined claimant in March 1999 and diagnosed left CTS. Claimant underwent physical therapy for several weeks, and May and July 1999 physical therapy reports note that claimant performed in a light physical demand category. Dr. W examined claimant in August 1999 and diagnosed left CTS.

Dr. D examined claimant at carrier's request in September 1999 and he reported that nerve conduction studies of claimant's left upper extremity that he performed were normal, that claimant had reached maximum medical improvement (MMI) with a zero percent impairment rating (IR), and that claimant could return to work with no restrictions.

Claimant said that she was unable to work due to pain from January 1999 through October 23, 1999. On October 22, 1999, Dr. F released claimant to light work. Claimant said that she returned to employer and has been working since October 23, 1999. DH said that claimant was put back on light-duty work in October 1999 when claimant came to employer and asked if there was a job opening for her.

Dr. M examined claimant at the request of the Texas Workers' Compensation Commission in November 1999 and he reported that claimant reached MMI on November 19, 1999, with a zero percent IR and that some of claimant's behavior in his office appeared deceptive.

The hearing officer decided that claimant has not had disability and that employer tendered a bona fide offer of employment to claimant. Claimant appeals the hearing officer's findings that employer provided light duty within the work restrictions of minimal use of her left hand; that claimant voluntarily quit employment on December 31, 1998; and that claimant's failure to work from December 31, 1998, through October 22, 1999, was not the result of a compensable injury. There is conflicting evidence on the disputed issues of disability and bona fide offer of employment. The hearing officer notes in his decision that he did not find claimant's testimony concerning her inability to work to be credible nor did he find the medical evidence of an inability to work to be credible. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Kathleen C. Decker  
Appeals Judge