APPEAL NO. 001428

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 17, 2000. She resolved the two disputed issues by concluding that the appellant (self-insured employer) did not make any bona fide offers of employment and that the respondent (claimant) had sustained disability beginning on December 17, 1999, and continuing through the date of the CCH. The self-insured employer requests our review, focusing all of its argument on the resolution of the bona fide offer of employment issue. The self-insured employer contends that the hearing officer construed too strictly Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 129.6(c) (Rule 129.6(c)) providing, in part, that [a] copy of the Work Status Report on which the offer is being based shall be included with the offer . . . and that the self-insured employer=s written offers of employment met the spirit, if not the letter, of Rule 129.6(c), because the claimant knew several Texas Workers= Compensation Work Status Reports (TWCC-73) were issued by the treating doctors and she had copies of them, albeit they were not attached to the offers of employment. The claimant responds that the evidence sufficiently supports the hearing officer=s determinations and points out that Rule 129.6(c) contains no exceptions for a TWCC-73 of the treating doctor.

DECISION

Affirmed.

The facts are not in dispute on appeal. The hearing officer=s Decision and Order contains a recitation of the evidence adduced at the hearing with which neither party takes issue. Accordingly, we will set out only so much of the evidence as is necessary for our decision.

The parties stipulated that the claimant sustained a compensable injury on_____. The claimant testified that she was off work for some period of time; that she saw Dr. F on December 7, 1999; that Dr. F released her to return to her regular duties as of December 8, 1999; that she did return to work but on December 16, 1999, reinjured herself at work turning a 50-pound bag of rock salt; and that she worked for about an hour on December 17, 1999, and has not since worked because of pain and swelling in her neck and shoulder. The claimant further stated that Dr. F, an orthopedic surgeon, had her seen by Dr. C in the same clinic for nerve testing; that she later changed treating doctors to Dr. Y, a chiropractor whom she first saw on February 17, 2000; and that Dr. Y told her she could not work for a year even though he subsequently released her to return to work with lifting and hours restrictions.

Dr. F=s December 20, 1999, report states the impression as suspected left cervical strain/cervical radiculopathy and states that claimant should remain off work unless she can restrict her lifting to 10 pounds or less. Dr. F=s Work Status@ form dated 12-20-99" reflects

that claimant is released to return to regular duties as of 12-21-99" with restrictions against lifting, carrying, and pushing more than 10 pounds.

Dr. C=s report of January 3, 2000, states that claimant has been informed that she may return to her job on a light duty type basis. Dr. C further reports that the claimant advised him that the self-insured employer does not want her to return to her regular duties until she is able to return to work without restrictions.

Dr. Y=s TWCC-73 dated 2-18-00" reflects that Dr. Y released the claimant to return to work as of 2-18-00" with restrictions against working more than four hours a day and with lifting and overhead reaching restrictions. In evidence are subsequent records of Dr. Y returning the claimant to light-duty work with restrictions.

In evidence is a letter from the self-insured employer to the claimant dated February 14, 2000, concerning the self-insured employer=s Temporary Alternate Work Program and her restrictions and a [self-insured employer's] Offer For Temporary Alternate Work (TAW) form offering claimant certain assignments to start January 14, 2000. Also in evidence is another letter and form with a start date of 2-29-00" and a similar letter dated March 20, 2000.

The claimant testified that she signed the self-insured employer=s first written employment offer, dated January 13, 2000, because she had been called and told to come to the office where a self-insured employer=s representative said he had some papers he needed her to sign and that she felt she had no choice but to sign. She further testified that she subsequently retained an attorney who advised her not to sign three subsequent employment offers from the self-insured employer because they were invalid. The claimant also stated that none of the written employment offers were accompanied by any doctors= reports nor were other documents attached.

Section 408.103(e) provides, in part, that if an employee is offered a bona fide position of employment that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee=s weekly earnings after the injury are equal to the weekly wage for the position offered to the employee.

Rule 129.6, pertaining to bona fide offers of employment, became effective December 26, 1999. Rule 129.6(a) provides, in part, that an employer or insurance carrier may request the treating doctor to provide a TWCC-73. Rule 129.6(b) provides, in part, that an employer may offer an employee a modified-duty position which has restricted duties which are within the employee=s work abilities as determined by the employee=s treating doctor. The hearing officer=s decision sets out Rule 129.6(c) and (d). Rule 129.6(c) states, in part, as follows: An employer=s offer of modified duty shall be made to the employee in writing and in the form and manner prescribed by the Texas Workers=

Compensation Commission. A copy of the TWCC-73 on which the offer is being based shall be included with the offer as well as the following information.

The hearing officer found that pursuant to Rule 129.6, the self-insured employer did not make any bona fide job offers to the claimant based on its omission of the doctor=s TWCC-73 forms with its offers of restricted employment. The hearing officer further found that due to the compensable injury of_____, the claimant was not able to obtain or [sic] retain employment at wages equivalent to her preinjury wage from December 17, 1999, through the date of the hearing Abased on her release to restricted work and no bona fide job offer of employment by the employer.

The claimant argued below that because the self-insured employer=s written offers of employment were not accompanied by a doctor=s TWCC-73, such offers failed to comply with the requirements of Rule 129.6(c) and were, thus, invalid. The hearing officer made clear in her discussion that she accepted that reasoning. The self-insured employer contends that the hearing officer read Rule 129.6(c) too literally and that the self-insured employer complied with the spirit, if not the letter, of Rule 129.6(c), particularly since the evidence indicated that claimant was aware of and/or had copies of the TWCC-73s and that such reports were from treating doctors.

We are satisfied that the evidence is sufficient to support the dispositive findings and conclusions. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King=s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We are also satisfied that the hearing officer has not misconstrued Rule 129.6(c). The language in Rule 129.6(c) requiring that a copy of the TWCC-73 be included with the offer is clear and unambiguous and makes no exceptions for the reports of treating doctors. *See, e.g.*, Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999).

The decision and order of the hearing officer are affirmed.

Philip F. O=Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge