

APPEAL NO. 002704

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 16, 2000. The hearing officer determined that: (1) respondent/cross-appellant (claimant) did not sustain a compensable injury; (2) claimant did not have disability; (3) employer had timely notice of the claimed injury; (4) appellant/cross-respondent (carrier) did not need newly discovered evidence to dispute the claim since it had first acted to accept the injury; and (5) employer made a bona fide offer. Claimant appealed the determinations regarding injury, disability, and bona fide offer on sufficiency grounds. Carrier responded that the Appeals Panel should affirm these complained-of determinations. Carrier appealed contending that the hearing officer erred in determining that employer had timely notice of the claimed injury. Claimant responded that the hearing officer did not err in making this determination. The determination about carrier's defenses was not appealed.

DECISION

We affirm in part, and reverse and render in part.

Claimant contends the hearing officer erred in determining that he did not sustain a compensable injury and that he did not have disability. The applicable law is discussed in Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The matters claimant raises in his brief involved credibility and fact issues, which the hearing officer resolved. A review of the decision and order indicates that the hearing officer simply did not believe that claimant sustained a work-related injury. We conclude that the hearing officer's determinations 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).

Claimant contends the hearing officer erred in determining that employer made a bona fide offer of employment to claimant. There is no evidence in the record that employer made a written offer of employment to claimant after claimant was released to work with restrictions by Dr. K in May 2000. We reverse the hearing officer's determination that employer made a bona fide offer of employment in this case. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6). In any case, claimant did not have disability, so there would be no offset against temporary income benefits.

In its appeal, carrier contends that the hearing officer erred in determining that employer had timely notice of claimant's claimed injury. We conclude that this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm that part of the hearing officer's decision that determines that claimant did not sustain a compensable injury, that he did not have disability, and that the employer had notice of the claimed injury within 30 days. We reverse that part of the hearing officer's

decision and order that determines that employer made a bona fide offer of employment and render a determination that there was no bona fide offer of employment in this case.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge