

APPEAL NO. 010301

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 23, 2001, a contested case hearing was held. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) did not sustain a compensable injury on or about _____; that the claimant has not had disability because she did not sustain a compensable injury; that the claimant failed to timely notify her employer of an injury and did not have good cause for failing to timely notify the employer of the claimed injury; and that the employer did not tender a bona fide offer of employment to the claimant. The claimant appealed the hearing officer's decision on the issues of compensable injury, disability, and timely notice to the employer, and the respondent/cross-appellant (carrier) appealed the hearing officer's decision on the issue of bona fide offer of employment.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury, failed without good cause to timely notify her employer of her claimed injury, and did not have disability. The claimant testified that she injured her back while working on _____, when she transferred a client from a bed to a wheelchair; that she reported to her supervisor on May 9, 2000, that she was injured while working on _____; and that she first sought medical attention for her injury on July 12, 2000, at which time she was diagnosed as having a back strain. The claimant's supervisor testified that she first became aware in July 2000 that the claimant was claiming a work-related injury.

There is conflicting evidence in this case. The fact that the claimant was diagnosed as having a strain two months after the claimed date of injury did not compel the hearing officer to find in her favor. There was conflicting testimony regarding whether the claimant reported to the employer that she was injured at work or only reported that she had difficulty lifting the patient. The conflicting evidence was for the hearing officer to resolve as the trier of fact. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision that the claimant did not sustain a compensable injury and that she failed without good cause to notify her employer of her claimed work-related injury within 30 days after the date of the claimed injury is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer did not err in determining that the employer did not tender a bona fide offer of employment to the claimant. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6) relates to bona fide offers of employment and subsection (c) provides, among other things, that a copy of the work status report on which the offer is

being based shall be included with the offer. In the instant case, there is no evidence that a copy of the work status report on which the offer was being based was included with the offer and thus the offer did not meet the requirements of Rule 129.6. See Texas Workers' Compensation Commission Appeal No. 010110-S, decided February 28, 2001. In addition, the offered work schedule, which included evening hours (the claimant has four children under the age of 12 and got off work at 2:00 p.m. on weekdays prior to her injury), was not similar to the claimant's work schedule prior to the injury, which is to be considered under Rule 129.6(e). See Texas Workers' Compensation Commission Appeal No. 001502, decided August 10, 2000.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge