

APPEAL NO. 012066  
FILED OCTOBER 11, 2001

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 commenced on July 24, 2001, and concluded on August 3, 2001. The hearing officer resolved the issues by determining that the respondent's (claimant) compensable (cervical) injury extends to and includes the claimant's right shoulder, right arm, right hand, and right thoracic outlet syndrome (TOS); that a postinjury offer of employment was not a bona fide offer because it exceeded the claimant's physical capabilities; and that the claimant had disability from April 19, 2000, through August 3, 2001.

The appellant (carrier) has appealed all three issues, contending that the claimant gave an inaccurate history to some of the doctors, that the employer had made a bona fide offer of employment (BFOE), and that the claimant did not have any disability after April 18, 2001, because she had been given a release to full duty by her then treating doctor. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained some injuries, including a cervical injury, in November 1999 (not the injury at issue) in a domestic violence assault. The nature, extent, and degree of recovery from those injuries are disputed. The claimant subsequently began work for the employer as an administrative assistant and was involved in a serious motor vehicle accident (MVA) in the course and scope of her employment on \_\_\_\_\_. The parties stipulated that the claimant sustained a compensable cervical injury in that MVA. The claimant contends that she also sustained right upper extremity injuries and a right TOS injury.

The claimant was seen in a hospital emergency room and was then treated by the doctor, a chiropractor, who had treated her for her assault injuries. The claimant's treating doctor, in what appear to be some conflicting reports, released the claimant to work with some restrictions (it is not clear whether the restrictions were due to the claimant's petite size or her injury). The claimant received the doctor's release on April 19, 2000, and subsequently changed treating doctors to Dr. R, another chiropractor, on April 20, 2000 (approved by the Texas Workers' Compensation Commission (Commission) on May 12, 2000). Dr. R took the claimant off work starting \_\_\_\_\_. By letter dated \_\_\_\_\_, the employer sent the claimant an offer of employment, which on its face appeared to comply with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6). The claimant contends that the offer was not a BFOE because it did not have a Work Status Report (TWCC-73) attached to it. The hearing officer found that the claimant was unable to work on April 19, 2000, when she received the employer's offer and therefore the

offer of employment exceeded the claimant's physical capabilities. The hearing officer's determinations on the disability issue are sufficiently supported by the evidence.

Regarding the extent of injury, the treating doctors referred the claimant to a number of specialists and medical doctors, and the Commission appointed a chiropractor as the designated doctor. In addition, there are two MRIs in evidence (one pre-MVA injury, the other post-MVA injury), EMG/NCV testing, and other diagnostic testing. The medical evidence is conflicting, but at least one medical doctor and the designated doctor agree that the claimant has TOS. The carrier argues that these doctors did not have a "true, honest and correct history" and the objective testing was "basically normal."

There was conflicting medical evidence submitted on the disputed issues. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **HARTFORD CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM ADAMS  
450 GEARS ROAD, SUITE 500  
HOUSTON, TEXAS 77067.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Michael B. McShane  
Appeals Judge