APPEAL NO. 012495
FILED NOVEMBER 14, 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 (CCH) was originally held on June 20. With regard to the issues before her, the hearing officer determined the following:

1. The respondent/cross-appellant (claimant) did not have disability resulting from the injury sustained on _____, from June 11, 1999, through October 1, 1999.

2. The appellant/cross-respondent (carrier) is not allowed to adjust the claimant's post-injury weekly earnings because the employer did not make a bona fide offer of employment (BFOE) to the claimant.

In Texas Workers' Compensation Commission Appeal No. 011677, decided August 30, 2001, the Appeals Panel remanded for the sole purpose of obtaining certain insurance carrier information required by Section 410.164(c) amended effective June 17, 2001. That information was added as Hearing Officer's Exhibit No. 2 with a copy to the claimant as Hearing Officer's Exhibit No. 3. No further hearing was held, and the hearing officer reissued her decision.

The carrier appealed the hearing officer's determination, arguing that the employer did make a bona fide offer of employment to the claimant. The claimant cross-appealed the hearing officer's determinations, arguing that the hearing officer erred in requiring the claimant to testify regarding his disability and that the hearing officer erred in finding that the claimant had no disability from June 11, 1999, through October 1, 1999. The claimant filed a response to the carrier's appeal, urging affirmance of the hearing officer's determination regarding a BFOE.

DECISION

Affirmed.

At the CCH, the parties stipulated that the claimant sustained a compensable injury on _____, and agreed that the time frame in dispute for disability was from June 11, 1999, through October 1, 1999.

The hearing officer determined from the claimant's testimony and the medical reports in evidence that the claimant did not have disability from June 11, 1999, through October 1, 1999. The medical report from the treating doctor, Dr. G, dated May 28, 1999, states that the claimant "would be able to return to some type of employment but with restrictions on light duty" and that the plan of treatment for the claimant involved "work trial light duty but [the claimant] must follow the restrictions as outlined on his functional

capacity report on 05/04/99." Also, Dr. G's medical report dated August 27, 1999, states that "[i]n the interim [claimant] is to remain off work." A functional capacity evaluation performed on May 4, 1999, indicated that while the claimant had some restrictions, he could return to his preinjury job as a door assembler. At the CCH, the claimant did not testify as to his ability to work. The evidence regarding disability was conflicting and the hearing officer is the sole judge of the credibility of the evidence. Section 410.165(a). The hearing officer's decision is supported by sufficient evidence.

The evidence sufficiently supports the hearing officer's determination that the offer of employment letter dated June 20, 1999, did not comply with the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.5 (Rule 129.5). The letter did not include the schedule the claimant would be working or the wages that the claimant would be paid.

The claimant argues that "the hearing officer erred in requiring claimant to testify regarding his disability in that the medical records speak for themselves." Our review of the records, show that the claimant did not want to testify at the CCH and that the carrier called the claimant, a proper party to the disputed issues before the hearing officer, as a witness on direct examination. The claimant does not indicate why he believes this constitutes error and we hold that no error in this procedure was evident.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. 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).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TOKIO MARINE & FIRE INSURANCE COMPANY, LTD.** and the name and address of its registered agent for service of process is

BRIAN C. NEWBY
400 W. 15TH STREET, SUITE 200
AUSTIN, TEXAS 78701-1647.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge