

APPEAL NO. 022551
FILED NOVEMBER 26, 2002

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 September 12, 2002. With respect to the issues before her, the hearing officer determined that the appellant (carrier) was not entitled to adjust post-injury earnings because the employer did not tender a bona fide offer of employment (BFOE) in compliance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(c) (Rule 129.6(c)). The hearing officer further determined that the respondent (claimant) had disability as a result of his _____, compensable injury from March 14 through March 18, 2002, and from March 20 through September 12, 2002. The carrier appealed, contending that the employer's light duty offer was a BFOE and that the claimant's attempts to comply with the offer were inadequate ("half hearted"). The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that while he received two letters from his employer purporting to be offers of employment, the letters did not contain a description of the physical requirements of his proposed job or that the employer would only assign tasks consistent with the claimant's medical restrictions. See, requirements of Rule 129.6(c). The claimant also testified that on the days he attempted to return to work, the employer required him to perform work outside of his restrictions. In addition, the testimony and the documentary evidence support the hearing officer's statement that the evidence was insufficient to show that either of the purported offers of employment had attached to it a copy of the claimant's Work Status Report (TWCC-73), a requirement of Rule 129.6. The Appeals Panel has held that there are no exceptions to an employer's requirement of strict compliance with Rule 129.6. Texas Workers' Compensation Commission Appeal No. 010110-s, decided February 28, 2002. The hearing officer's determination that the employer's light duty offer of employment did not constitute a BFOE pursuant to Rule 129.6 is supported by the evidence.

The hearing officer did not err in determining that the claimant had disability as a result of his _____, compensable injury from March 14 through March 18, 2002, and from March 20 through September 12, 2002 (the date of the (CCH)). The claimant's compensable injury was not disputed, and the claimant testified that he could not work because of the pain caused by his compensable injury to his head, neck, and low back. In evidence were doctors' reports that the hearing officer believed sufficiently explained how the claimant's compensable injury kept the claimant from obtaining and retaining employment at his preinjury wage.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of 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, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not find so here.

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica Lopez
Appeals Judge

Robert W. Potts
Appeals Judge