

APPEAL NO. 031494
FILED JULY 16, 2003

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 scheduled for March 11, 2003, but was held on May 14, 2003. The hearing officer resolved the disputed issues by deciding that the employer did make a bona fide offer of employment (BFOE) to the appellant (claimant) entitling the respondent (carrier) to adjust the post injury weekly earnings from January 29 through September 23, 2002; that the claimant did not have disability from January 29 through September 23, 2002; that the claimant did not have good cause for failing to submit to a required medical examination (RME)¹ and the claimant is not entitled to temporary income benefits (TIBs) from January 28 through September 23, 2002. The evidence reflects that the parties agreed at the CCH that the claimant received a BFOE dated November 21, 2001, and worked as a result of said offer from November 28, 2001, through January 28, 2002. The claimant appealed, arguing that the medical evidence and the claimant's testimony proved beyond a preponderance of the evidence that the claimant had disability and good cause for failing to submit to a RME. The carrier responded, urging affirmance of the disputed determinations.

DECISION

Affirmed.

The claimant had the burden to prove that she had disability as defined by Section 401.011(16). Conflicting evidence was presented on this issue. The claimant testified that she asked to be taken off work and the hearing officer noted that although the claimant's treating doctor took her off work, the medical records and the claimant's testimony failed to persuasively establish why the claimant was unable to perform her job duties. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(c) (Rule 130.6(c)) provides that a carrier may suspend TIBs if an employee, without good cause fails to attend a designated doctor examination. Although the hearing officer cited Rule 126.6(h) in her Statement of the Evidence, the corresponding provision which permits the carrier to suspend TIBs for failure to attend a RME appointment, it is clear that she properly applied Rule 130.6, the provision applicable to designated doctor examinations. The claimant acknowledged at the CCH that she received notice of the scheduled designated doctor examination but she did not feel that she needed to attend the examination. Whether good cause exists for failure to attend a designated doctor examination is a matter left up to the discretion of the hearing officer. That

¹ The issue was framed as relating to an RME, however, the evidence established that the missed examination at issue was a designated doctor's examination.

determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 010828, decided May 16, 2001. The test for good cause is that of ordinary prudence; that is, the degree of diligence an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. The hearing officer noted that the claimant failed to establish good cause for not attending the designated doctor's appointment originally scheduled on March 22, 2002. The hearing officer found that the claimant failed to contact the designated doctor's office to reschedule the examination to occur no later than the seventh day after the originally scheduled examination date and that the claimant was examined by the designated doctor on September 23, 2002. There is sufficient evidence to support these findings.

The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**ROBIN MOUNTAIN
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge