APPEAL NO. 012338
FILED NOVEMBER 15, 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 held on July 16, 2001, with the record closing on September 6, 2001. The hearing officer resolved the disputed issues by determining that the respondent's (claimant) _____, compensable injury does not extend to or include his lumbar spine; that the claimant has had disability as a result of his compensable injury from _____, to the present; and, that the March 30, 2000, letter from the employer does not constitute a bona fide offer of employment (BFOE) because it does not state the physical requirements of the position and it was not delivered to the claimant. The appellant (carrier) appealed the hearing officer's determinations as to the validity of the BFOE and disability. The determination as to the extent of the compensable injury has not been appealed and has become final. There is no response from the claimant in the file.

DECISION

Affirmed.

On _____, the claimant, who is a machinist, sustained a compensable injury to his groin. As a result of that injury, the claimant was unable to return to his job as a machinist. The claimant's treating doctor issued several sedentary/light duty releases, including one dated _____, with a lifting restriction of 10 pounds occasionally. The carrier introduced into evidence a letter from the employer to the claimant, dated March 30, 2000, offering light duty work and asserted that it was a BFOE. The claimant denied ever receiving the letter. On appeal, the carrier asserts that the _____, letter constituted a BFOE, that its evidence showed that the letter was mailed to the claimant, and that since the claimant did not accept the offer, he does not have disability.

The hearing officer did not err in determining that the March 30, 2000, letter does not constitute a BFOE and that the claimant had disability from _____, to the present.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). There was conflicting evidence presented as to whether the claimant received the offer. Whether or not the claimant received the offer was a question of fact for the hearing officer to determine. The hearing officer found the claimant's testimony to be credible, and determined he did not receive the offer. Nothing in our review of the record indicates that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Even if the evidence established that the claimant received the offer, it fails to fully comply with the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6). While the offer does state the general nature of the two assigned tasks, it does not specifically state the physical requirements of the position, nor does it contain the statement that the

employer "will provide training if necessary." *See* Texas Workers' Compensation Commission Appeal No. 010110-S, decided February 28, 2001; Texas Workers' Compensation Commission Appeal No. 011878-S, decided September 28, 2001. The hearing officer's determination that the claimant has had disability as a result of his compensable injury from _____, to the present is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. 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 hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **GENERAL INSURANCE CO. OF AMERICA** and the name and address of its registered agent for service of process is

CT CORP.
350 N. ST. PAUL
DALLAS, TEXAS 75201.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge