

APPEAL NO. 013120  
FILED FEBRUARY 7, 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 was held on October 9, 2001. The record closed on December 4, 2001. The hearing officer determined that (1) the employer did not tender a bona fide offer of employment to the respondent (claimant) at any time; and (2) the claimant had disability from March 30, 2001, through the date of the hearing. The appellant (carrier) appeals the determinations on sufficiency grounds and further asserts that the claimant did not have disability after August 3, 2001, because light-duty work was available to him through the employer at preinjury wages and the claimant refused to perform such work. No response was filed by the claimant.

DECISION

Affirmed.

**BONA FIDE OFFER OF EMPLOYMENT**

The hearing officer did not err in determining that the employer at no time tendered a bona fide offer of employment to the claimant. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(c) (Rule 129.6(c)) provides, in relevant part, that an offer of modified duty shall be in writing, include a copy of the Work Status Report (TWCC-73) on which the offer is based, and a statement that the employer will only assign tasks consistent with the employee's knowledge and skills and will provide training if necessary. We have said that all of the information required by Rule 129.6(c) shall be present, and that Rule 129.6 "contains no exceptions for failing to strictly comply with its requirements." Texas Workers' Compensation Commission Appeal No. 010110-S, decided February 28, 2001. The claimant's supervisor testified that a copy of the applicable TWCC-73 was not attached to the employer's initial offer of employment and he was not sure that the TWCC-73 was attached to the subsequent offer. Additionally, the offers of employment do not contain a statement that the employer will only assign tasks consistent with the employee's knowledge and skills and will provide training if necessary. In the absence of such information, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986).

**DISABILITY**

The hearing officer did not err in determining that the claimant had disability from March 30, 2001, through the date of the hearing. The carrier essentially asserts that the claimant's inability to obtain and retain employment at preinjury wages was a result of his refusal to work, rather than the compensable injury. We have said that the compensable injury need not be the sole cause of the inability to obtain and retain employment (Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993); the fact

that a claimant resigned, retired, or was involuntarily discharged from employment may be considered but does not foreclose the existence of disability (Texas Workers' Compensation Commission Appeal No. 970089, decided February 28, 1997).

Whether the claimant was unable to obtain or retain employment at his preinjury wage because of the compensable injury was a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 000303, decided March 29, 2000. In view of the claimant's testimony and the medical evidence, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Michael B. McShane  
Appeals Judge