

APPEAL NO. 013159
FILED JANUARY 29, 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 December 12, 2001. The hearing officer determined that (1) the employer did not make a bona fide offer of employment therefore the appellant (carrier) is not entitled to adjust temporary income benefits (TIBs) for the period from June 7, 2001, to September 30, 2001, or for any period after June 4, 2001; and (2) the respondent (claimant) had disability from June 5, 2001, through the date of the CCH. The carrier appeals, essentially asserting that the claimant is not entitled to full TIBs because he had the ability to work light duty and such employment was available to him through the employer. The claimant urges affirmance.

DECISION

Affirmed.

DISABILITY

The hearing officer did not err in determining that the claimant had disability from June 5, 2001, through the date of the hearing. Whether the claimant had disability for the stated period was a question of fact for the hearing officer and could be established by the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 000303, decided March 29, 2000. Additionally, we have noted that a restricted release to work as opposed to an unrestricted release is evidence that the effects of the injury remain and disability continues. See Texas Workers' Compensation Commission Appeal No. 92432, decided October 2, 1992. The carrier argues that the claimant was off due to "an inaccurate off-work slip." The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, 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).

The carrier appears to argue that the claimant does not have disability, given the availability of light-duty employment through the employer. We have said on numerous occasions that disability and bona fide offer of employment are distinct, albeit related, issues. Texas Workers' Compensation Commission Appeal No. 001143, decided July 3, 2000. Disability concerns whether a claimant is unable to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury, while a bona fide offer is used to determine the amount of TIBs due, if any. *Id.* To be clear, the existence of a bona fide offer of employment would not preclude a finding that disability continues. Appeal No. 92432, *supra*.

BONA FIDE OFFER OF EMPLOYMENT

The hearing officer did not err in determining that the employer did not make a bona fide offer of employment therefore the carrier is not entitled to adjust TIBs for the period from June 7, 2001, to September 30, 2001. 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 and include a copy of the Work Status Report (TWCC-73) on which the offer is based, the wages the employee will be paid, and a statement that the employer will only assign tasks consistent with the employee's physical abilities, 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. Because the employer's offer of modified duty in this case did not include the above referenced information, the hearing officer correctly determined that the employer did not make a bona fide offer of employment therefore the carrier is not entitled to adjust TIBs for the period from June 7, 2001, to September 30, 2001.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge