

APPEAL NO. 020160
FILED MARCH 6, 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 December 20, 2001. The hearing officer determined that the employer tendered a bona fide offer of employment (BFOE) to the appellant (claimant) as of December 9, 2001. On appeal, the claimant contends that this determination is against the great weight and preponderance of the evidence. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

At issue in this case is whether the hearing officer erred in determining that the employer tendered a BFOE to the claimant as of December 9, 2001. Section 408.103(e) provides that if an employee is offered a bona fide position of employment "that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly earnings after the injury are equal to the weekly wage for the position offered to the employee." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(c) (Rule 129.6(c)) provides:

- (c) An employer's offer of modified duty shall be made to the employee in writing and in the form and manner prescribed by the Commission [Texas Workers' Compensation Commission]. A copy of the Work Status Report on which the offer is being based shall be included with the offer as well as the following information:
 - (1) the location at which the employee will be working;
 - (2) the schedule the employee will be working;
 - (3) the wages that the employee will be paid;
 - (4) a description of the physical and time requirements that the position will entail; and
 - (5) a statement that the employer will only assign tasks consistent with the employee's physical abilities, knowledge, and skill and will provide training if necessary.

The claimant argues that the December 4, 2001, offer of employment was defective because the Commission Work Status Report Form (TWCC-73), dated July 17, 2001, predated the claimant's surgery and, therefore was neither accurate nor valid with regard

to the claimant's work status restrictions. The claimant contends that the offer of employment should have been accompanied by the work status report dated December 11, 2001, and should have complied with the restrictions therein. Obviously the TWCC-73 dated December 11, 2001, not being in existence at the time the offer of employment was made on December 4, 2001, could not have accompanied the letter. Therefore, we perceive no error in the hearing officer's determination that the offer of employment, dated December 4, 2001, and tendered to the claimant as of December 9, 2001, was accompanied by a valid TWCC-73, addressed the requirements of a BFOE, and constituted a BFOE.

The decision and order of the hearing officer are affirmed.

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

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge