

APPEAL NO. 020431
FILED APRIL 4, 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 January 17, 2002. The hearing officer determined that the employer's offer of a position to the respondent (claimant) was not a bona fide offer of employment (BFOE) in accordance with Section 408.103(e) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6), and that the claimant had disability from August 14, 2001, continuing through the date of the CCH. The appellant (carrier) appeals the adverse determinations on sufficiency of the evidence grounds. The claimant replied, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the employer did not make a BFOE. 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. 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 employer's offer of modified duty in this case did not include a TWCC-73. Based on this information, the hearing officer could determine that the employer did not make a BFOE to the claimant.

The hearing officer did not err in determining that the claimant had disability from August 14, 2001, through the date of the CCH. 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. In this case, the claimant testified to a continuing course of medical treatment up to the week before the CCH, as well as being told by a doctor that he needed another surgery, and there was no evidence that the claimant had been released to return to full duty. 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 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).

We affirm the decision and order of the hearing officer.

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

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

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge