

APPEAL NO. 020895
FILED MAY 31, 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 March 11, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the claimed injury did not occur while the claimant was in a state of intoxication; that a valid bona fide offer of employment (BFOE) was not made to the claimant by the employer; that the appellant (carrier) did not waive its right to contest compensability; and that the claimant had disability from June 15, 2001, through the date of the hearing. The carrier appeals, arguing that the hearing officer's injury, disability, and BFOE determinations are against the great weight of the evidence. The claimant responds, urging affirmance. The hearing officer's intoxication and carrier waiver determinations have not been appealed and have therefore become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and that he had disability resulting from the compensable injury from _____, through the date of the hearing. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer's injury and disability determinations are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb the challenged determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in determining that the employer did not make a BFOE. 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. 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 or statutory statement that the employer will only assign tasks consistent with the employee's physical abilities, knowledge, and skills and will provide training if necessary. Based on this information, the hearing officer could determine that the employer did not make a BFOE

to the claimant.

The hearing officer's decision and order are affirmed.

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

**GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge