

APPEAL NO. 021126
FILED JUNE 5, 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 April 2, 2002. The hearing officer determined that the respondent's (claimant) _____, compensable injury (apparently a fall to the claimant's hands and knees) extends to and includes a herniated nucleus pulposus at L1-2 and L4-5; that the claimant had disability from June 16, 2001, through the date of the CCH; and that the employer tendered a bona fide offer of employment (BFOE), which was good until June 15, 2001, thereby entitling the appellant (carrier) "to adjust benefits from June 8 to June 15, 2001."

The carrier appeals, requesting that we reform a typographical error in one of the hearing officer's findings of fact, and otherwise asserts that the medical evidence does not support the hearing officer's decision; that the hearing officer erred in ending the BFOE after June 15, 2001; and that the testimony of two of the carrier's witnesses contradicts the claimant's testimony. The claimant responded, urging affirmance.

DECISION

Affirmed as reformed in part and reversed and rendered in part.

Both parties agree that the hearing officer's Finding of Fact No. 5, stating that the employer offered the claimant a light-duty job "on June 8, 2000," is incorrect, and the finding should read that the light-duty job was offered "on June 8, 2001." The hearing officer's finding of fact is so reformed.

Most of the evidence is disputed and in conflict. We have frequently noted that Section 410.165(a) provides that the hearing officer, as the 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. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

Addressing some of the carrier's specific points, the carrier cites various medical reports to support its position. However, as noted above, the hearing officer is the sole judge of the weight and credibility to be given medical reports and we conclude that the hearing officer's decision regarding the extent-of-injury and disability from June 16,

2001, to the CCH issues are supported by sufficient evidence (including that from the carrier's required medical examination doctor) and are affirmed.

We disagree with the carrier's statement that "[c]ertainly the [BFOE] was met under [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6] Rule 129.6" The employer's "Modified Duty Job Offer Letter" does not meet the requirements of Rule 129.6, namely, there was no Work Status Report (TWCC-73) included with the offer as required by Rule 129.6(c) nor is there a statement required by Rule 129.6(c)(5). The modified duty letter does not meet the requirements of a BFOE and we reverse so much of the hearing officer's decision that finds that the employer tendered a BFOE and render a new decision that the modified duty job offer does not meet the requirements of a BFOE pursuant to Rule 129.6. While the modified duty letter is evidence that the employer made an offer of modified duty which the claimant signed, and the hearing officer could consider it as an offer, it does not meet the requirements of a BFOE pursuant to Rule 129.6. The hearing officer erred in finding that the employer tendered a BFOE to the claimant that was valid from June 8, 2001, through June 15, 2001. Whether the claimant had disability as defined by Section 401.011(16) for the period of June 8, 2001, through June 15, 2001, has not been resolved.

Finally, the carrier contends that since the hearing officer makes no reference to a videotape (of someone else allegedly performing the same duties as the claimant) that the hearing officer "did not even consider the totality of the evidence." The claimant disputes the accuracy of the videotape. We have reviewed the videotape of a male worker packing four boxes and find nothing in the videotape to compel a reversal of the hearing officer's decision.

Accordingly, the hearing officer's decision and order, as reformed, on the disputed issues of extent of injury and disability, are affirmed. So much of the hearing officer's decision that found that the employer tendered a BFOE is reversed and we render a new decision that the employer's modified duty job offer letter does not meet the requirements of a BFOE pursuant to Rule 129.6.

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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Roy L. Warren
Appeals Judge