APPEAL NO. 023240
FILED FEBRUARY 19, 2003

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 November 18, 2002. The following issues were before the hearing officer: (1) Is the respondent (claimant) entitled to change treating doctors pursuant to Section 408.022? (2) Did the appellant (self-insured) make a bona fide offer of employment (BFOE) entitling it to adjust post injury earnings (PIE) and, if so, for what period? and (3) Did the claimant have disability resulting from the compensable injury sustained on _____, and if so, for what period? The hearing officer determined that (1) the claimant is entitled to a change in treating doctors; and (2) the self-insured made a BFOE entitling it to adjust the claimant's PIE beginning May 28, 2002, and continuing through May 30, 2002. The hearing officer did not enter a decision with regard to disability. The self-insured appeals each issue. The claimant did not file a response.

DECISION

Affirmed as reformed.

CHANGE OF TREATING DOCTORS

The hearing officer did not err in determining that the claimant is entitled to change treating doctors. Section 408.022 establishes the criteria for selecting and changing a treating doctor. The self-insured essentially asserts that the claimant sought a change in treating doctors for the improper purpose of obtaining an off-work slip. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Contrary to the self-insured's assertion, the hearing officer could find, as he did, that the change was sought due to a closure of the original treating doctor's office. 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, 176 (Tex. 1986).

BONA FIDE OFFER OF EMPLOYMENT

The hearing officer did not err in determining that the self-insured made a BFOE entitling it to adjust the claimant's PIE beginning May 28, 2002, and continuing through May 30, 2002. At issue is the date through which the self-insured is entitled to adjust the claimant's PIE. The hearing officer determined that date to be May 30, 2002, because the claimant was taken off work on May 31, 2002, by his new treating doctor. The self-insured disputes the claimant's off-work restriction, arguing that there was no change in the claimant's condition to warrant an off-work slip and that the claimant's change in treating doctors was improper. Nothing in our review of the record reveals

that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Additionally, given our affirmance of the determination regarding the change in treating doctors, we find no basis to disturb the hearing officer's BFOE determination.

DISABILITY

As indicated above, the hearing officer did not enter a decision regarding disability. The evidence shows that the claimant was taken off work for his compensable injury from _____, through March 17, 2002. The claimant was released to "try some light duty" on February 18, 2002, and he returned to work for his employer in a light-duty capacity on that date. The claimant testified that he "couldn't do it" and he was taken off work again on February 19, 2002. The parties did not dispute that the claimant had disability up to May 28, 2002, and that he received temporary income benefits (TIBs) for that period. The self-insured, however, disputed disability for the period of May 28, 2002, through the date of the hearing. Although the hearing officer did not enter a decision with regard to the issue of disability, he did find that the claimant was restricted from his full-duty work for that period. In the Statement of the Evidence portion of the decision, the hearing officer further stated, "In complying with his treating doctor's instructions, the claimant has been unable to obtain and retain employment through the date of the hearing in this matter." We, therefore, reform the hearing officer's decision to reflect that the claimant had disability from _____, through the date of the hearing.

In its appeal, the self-insured asserts that the claimant cannot establish disability given the existence of a BFOE.[1] The Appeals Panel has stated on numerous occasions that the issues of BFOE and disability are distinct. 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 BFOE is used to determine the amount of TIBs due, if any. Id. To be clear, the existence of a BFOE does not result in the end of disability but only a determination of PIE for purposes of entitlement to TIBs. Id.

The self-insured also asserts that the claimant cannot establish disability given the availability of light-duty work consistent with his restrictions.[2] The self-insured cites, in support of its position, Texas Workers' Compensation Commission Appeal No. 012646, decided December 10, 2001. However, in that case, we affirmed the hearing officer's determination that the claimant had disability for the period of light-duty,

[1] The self-insured's argument presumes that the claimant was in a light-duty status throughout the disputed period of disability. Because we affirmed, above, the hearing officer's determination that the claimant was in an off-work status beginning May 31, 2002, we will consider the carrier's argument only with regard to the period of May 28, 2002 through May 30, 2002.

[2] Again, this argument presumes that the claimant was in a light-duty status throughout the disputed period of disability. Because we affirmed, above, the hearing officer's determination that the claimant was in an off-work status beginning May 31, 2002, we will consider the carrier's argument only with regard to the period of May 28, 2002 through May 30, 2002.

notwithstanding the availability of light-duty employment consistent with the claimant's restrictions. Indeed, we have said on numerous occasions that a claimant under a light-duty release does not have an obligation to look for work or show that work was not available within his restrictions. Texas Workers' Compensation Commission 022908, decided January 8, 2003.

The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge