

APPEAL NO. 033121
FILED JANUARY 27, 2004

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 4, 2003. With respect to the issues before her, the hearing officer determined that the respondent (claimant) had disability as a result of his compensable injury, from _____, through the date of the hearing, and that the employer did not tender a bona fide offer of employment (BFOE) to the claimant. In its appeal, the appellant (carrier) argues that the employer did offer the claimant a BFOE and that the claimant did not have disability because he refused a light-duty job, which he was able to perform, at full pay. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. At issue was whether the employer made a BFOE to the claimant entitling the carrier to adjust post-injury weekly earnings, and whether the claimant had disability resulting from the injury sustained on _____. The carrier asserts that the employer tendered a BFOE to the claimant by an undated letter, to which the claimant failed to respond. The claimant acknowledged that he received the letter and that he did not respond to it because his treating doctor told him he couldn't work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(c) (Rule 129.6(c)) sets out the requirements for a BFOE. In the present case, we find no error in the hearing officer's finding that the employer did not make a BFOE to the claimant. The hearing officer found the offer to be defective in several regards, including the fact that it did not include a copy of the Work Status Report (TWCC-73) upon which it was based nor did it contain a statement that the employer would provide training if necessary. We decline to accept the carrier's contention that the inclusion of the TWCC-73, upon which the offer was based, was unnecessary because the claimant had signed the TWCC-73 at the doctor's office so he clearly had the information. The requirement that the TWCC-73 be attached to the offer is not designed to ensure that the claimant is aware of the restrictions; rather, its purpose is to ensure that the employer is aware of the claimant's work restrictions and, thus, to further ensure that the job duties in the position offered are actually consistent with those restrictions. Thus, the omission of the TWCC-73 is significant despite the carrier's assertions to the contrary. Additionally, we cannot agree that the fact that an employer representative testified at the hearing to the effect that the claimant would be trained if necessary cures the omission of that language in the letter as is clearly required by Rule 129.6(c).

As to disability, the carrier asserts that the claimant had the ability to obtain and retain employment at wages equivalent to his preinjury wage because he refused the

employer's offer of a light-duty position. In support of its argument that the claimant did not have disability, the carrier cites to dicta contained in Texas Workers' Compensation Commission Appeal No. 012646, decided December 10, 2001, that arguably supports its position. However, we cannot agree that Appeal No. 012646 necessitates reversal in this case. Indeed, that decision ultimately affirmed a hearing officer's determination that the claimant had disability for the period of time he remained under a light-duty release. Accordingly, that case supports an affirmance here.

The hearing officer's decision and order are affirmed.

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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge