

APPEAL NO. 033257
FILED FEBRUARY 9, 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 December 1, 2003. The hearing officer determined that the respondent (claimant) had disability from February 7 through February 10, 2003, but did not have disability from February 11 through December 1, 2003, and that the employer has not made a bona fide offer of employment (BFOE) entitling the appellant (carrier) to adjust the post injury wages as of the date of the hearing. The carrier appealed the hearing officer's determination that the employer has not made a BFOE. The appeal file does not contain a response from the claimant. The hearing officer's determinations regarding disability have not been appealed and have become final. Section 410.169.

DECISION

Affirmed.

The carrier asserts that based upon a release to return to work with restrictions, the employer made the offer of employment dated February 19, 2003, that is found in Carrier's Exhibit A. The claimant conceded that he did in fact receive the offer. The hearing officer determined that the offer did not qualify as a BFOE because it was not specific as to the actual number of hours the claimant would have worked. The offer states "[y]ou are scheduled to work up to 30 hours per week at \$8.29 per hour. Your schedule for the week beginning February 24th is 12:00 to 5:00 pm. This schedule will change from week to week based on the business needs of the center."

We affirm the hearing officer's determinations that the offer was not a BFOE. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The offer fails to fully comply with the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6). See Texas Workers' Compensation Commission Appeal No. 010110-s, decided February 28, 2001, and Texas Workers' Compensation Commission Appeal No. 011878-s, decided September 28, 2001. The Appeals Panel may affirm on any grounds raised by and supported by the evidence. Daylin v. Juarez, 766 S.W.2d 347, 353 (Tex. App.-El Paso 1989, writ denied); Texas Workers' Compensation Commission Appeal No. 000558, decided May 1, 2000. Even if we were to accept the carrier's assertion that the language in the offer complies with Rule 129.6(c)(2), we note that there is no evidence that the employer attached a copy of the Work Status Report (TWCC-73) upon which the offer was based when it was sent to the claimant, see Rule 129.6 (c). Further the offer does not contain a statement that the employer will provide training if necessary, see Rule 129.6(c)(5). The hearing officer's determination that the employer failed to make a BFOE is supported by sufficient evidence and is not 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge