

APPEAL NO. 040826
FILED JUNE 1, 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 (CCH) was held on March 12, 2004. The hearing officer determined that the employer did not extend a bona fide offer of employment (BFOE) to the respondent (claimant), and that the claimant had disability beginning on June 30, 2003, and continuing through the date of the CCH. The appellant (carrier) appealed, arguing that the hearing officer's BFOE determination is against the great weight and preponderance of the evidence and the disability determination is wrong as a matter of law. The claimant responded, urging affirmance.

DECISION

Affirmed.

BFOE

The hearing officer did not err in determining that the employer did not extend a BFOE to the claimant. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(c) (Rule 129.6(c)) sets out the requirements for a BFOE. This portion of the rule is clear and unambiguous, and provides:

- (c) An employer's offer of modified duty shall be made to the employee in writing and in the form and manner prescribed by the [Texas Workers' Compensation Commission (Commission)]. A copy of the [Work Status Report (TWCC-73)] on which the offer is being based shall be included with the offer as well as the following information:
 - (1) the location at which the employee will be working;
 - (2) the schedule the employee will be working;
 - (3) the wages that the employee will be paid;
 - (4) a description of the physical and time requirements that the position will entail; and
 - (5) a statement that the employer will only assign tasks consistent with the employee's physical abilities, knowledge, and skills and will provide training if necessary.

Rule 129.6(d) provides that a carrier may deem an offer to be bona fide if it, among other requirements, included all the information required in Rule 129.6(c). Rule 129.6

indicates that the Commission "will" find an offer to be bona fide if it conforms to the doctor's restrictions, is communicated to the employee in writing, and meets the requirements of Rule 129.6(c). In the present case, the hearing officer found that there was no BFOE extended to the claimant because the offer did not state the wages to be paid, provide a description of the physical requirements the position would entail, and did not include a copy of the TWCC-73. Rule 129.6 contains no exceptions for failing to strictly comply with its requirements. We conclude that the hearing officer's determination that the employer did not tender a BFOE to the claimant is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

DISABILITY

The carrier asserts that the claimant cannot establish disability given the availability of light-duty work consistent with his restrictions. The carrier cites Texas Workers' Compensation Commission Appeal No. 012646, decided December 10, 2001, and other Appeal Panels decisions to support its contention. In Appeals No. 012646, *supra*, we affirmed the hearing officer's determination that the claimant had disability for the period of light-duty, notwithstanding the availability of light-duty employment consistent with the claimant's restrictions. 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 hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, supra; Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we do not find legal error in the hearing officer's disability determination.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge