

APPEAL NO. 132163  
FILED NOVEMBER 13, 2013

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 August 1, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (carrier) is not entitled to adjust the respondent's (claimant) post-injury weekly earnings under 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6); (2) the claimant had disability beginning on November 1, 2012, and continuing through the date of the CCH; and (3) the claimant has not reached maximum medical improvement (MMI). Although impairment rating (IR) was a disputed issue, the hearing officer failed to make a conclusion of law or decision regarding the claimant's IR. The appeal file does not contain a response from the claimant.

**DECISION**

Affirmed in part and reversed and rendered in part.

The claimant testified he was injured when the truck he was driving rolled over. The medical records reflect that the claimant had a fractured right scapula.

**DISABILITY**

The hearing officer's determination that the claimant had disability beginning on November 1, 2012, and continuing through the date of the CCH is supported by sufficient evidence and is affirmed.

**MMI**

The hearing officer's determination that the claimant has not reached MMI is supported by sufficient evidence and is affirmed.

**BONA FIDE OFFER OF EMPLOYMENT (BFOE)**

The hearing officer found that the employer did not make a BFOE to the claimant entitling the carrier to adjust post-injury weekly earnings. That finding is supported by sufficient evidence and is affirmed. However, in both Conclusion of Law No. 3 and his decision the hearing officer determined only that the carrier is not entitled to adjust claimant's post-injury weekly earnings under Rule 129.6. Accordingly, we reverse the hearing officer's decision as being incomplete and render a new decision that the employer did not make a BFOE to the claimant entitling the carrier to adjust the post-injury weekly earnings.

## **IR**

The hearing officer found that because the claimant was not at MMI any IR would be premature. That finding is supported by sufficient evidence and is affirmed. However, the hearing officer failed to make a conclusion of law and decision on the IR issue. Accordingly, we reverse the hearing officer's decision as being incomplete and render a new decision that because the claimant has not reached MMI, an IR is premature.

## **SUMMARY**

We affirm the hearing officer's determination that the claimant had disability beginning on November 1, 2012, and continuing through the date of the CCH.

We affirm the hearing officer's determination that the claimant has not reached MMI.

We reverse the hearing officer's decision as being incomplete and render a new decision that the employer did not make a BFOE to the claimant entitling the carrier to adjust the post-injury weekly earnings.

We reverse the hearing officer's decision as being incomplete and render a new decision that because the claimant has not reached MMI, an IR is premature.

The true corporate name of the insurance carrier is **OLD REPUBLIC GENERAL INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge