APPEAL NO. 171296
FILED JULY 24, 2017

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 April 24, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the employer did not tender a bona fide offer of employment (BFOE) to the respondent (claimant) entitling the appellant (carrier) to adjust the post-injury weekly earnings; and (2) the claimant had disability resulting from the compensable injury of (date of injury), beginning on December 7, 2016, and continuing through January 16, 2017.

The carrier appealed the hearing officer's BFOE determination, contending that the hearing officer's determination is reversible as a matter of law and fact. The claimant responded, urging affirmance of the hearing officer's determination. The hearing officer's determination that the claimant had disability resulting from the compensable injury of (date of injury), beginning on December 7, 2016, and continuing through January 16, 2017, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of right wrist sprain, right hand contusion, right wrist contusion, and right forearm contusion. The claimant testified he injured his right hand when a hose struck his hand and crushed it against a fitting.

It is undisputed that two offers of employment for a modified duty position were sent to the claimant after his compensable injury. The first offer is dated November 29, 2016, and was sent on November 30, 2016. The second offer is dated December 29, 2016, and was sent on December 30, 2016. The evidence established that the offers were sent by Re-employability, Inc. (RE), a third-party vendor.

(Ms. T), a safety compliance manager for the employer, testified at the CCH that in the normal course of business regarding injured employees the employer determines whether or not work is available to accommodate an injured employee's restrictions. If the employer determines that the injured employee's restrictions cannot be accommodated the employer looks to outside sources that would accept the injured employee on the employer's behalf. Ms. T testified that she discussed this process with

the adjuster. Ms. T told the adjuster the employer would pay the claimant $15.00 per hour for working light duty with an outside source that could accommodate the claimant's restrictions. The adjuster contacted RE, and gave them the claimant's restrictions and the employer's offered rate of pay.

As noted above RE sent both offers to the claimant. Both offers notified the claimant that he would work at a RMH in (city), Texas, and that the claimant's employer would pay the claimant $15.00 per hour. Both offers listed the address to which the claimant was to report for work, the claimant's work schedule, specific job duties, and a statement that the employer would only assign the claimant tasks consistent with his physical abilities, knowledge, and skill and training would be provided if necessary. Both offers contained the address of the claimant's employer and Ms. T's typewritten name.

We affirm the hearing officer's determination that the employer did not tender a BFOE to the claimant entitling the carrier to adjust the post-injury weekly earnings because there is sufficient evidence to support the hearing officer's discussion that the offers were not in compliance with 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6) because they were not based upon the restrictions of the claimant's treating doctor at the time the offers were issued. However, an affirmance is written to clarify statements contained in the hearing officer's discussion regarding the offers sent by RE. The hearing officer stated that Rule 129.6 does not provide for the use of a third-party vendor, and "[a]s the [Rule 129.6] is strictly construed, the two letters sent to [the] [c]laimant by [RE] do not comply with Rule 129.6, and thus are not valid BFOEs in accordance with Rule 129.6." Under the facts of this case we disagree. The evidence established that the offers were sent by RE at the request of Ms. T on behalf of the employer to find work that would accommodate the claimant's restrictions. The evidence also established that the employer would pay the claimant $15.00 per hour to work at RMH, and that this position would accommodate the claimant's restrictions. We hold that in this case the offers sent by RE on behalf of the employer are considered offers from the employer.

The true corporate name of the insurance carrier **is NEW HAMPSHIRE INSURANCE COMPANY** 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 78701-3232.

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge