

APPEAL NO. 180817  
FILED MAY 29, 2018

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 February 22, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the employer tendered a bona fide offer of employment (BFOE) to the appellant (claimant); and (2) the claimant did not have disability from December 6, 2016, through December 22, 2017, resulting from an injury sustained on (date of injury). The claimant appealed, disputing the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

**DECISION**

Affirmed in part, reformed in part, and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the carrier has accepted a cervical strain, thoracic strain/contusion, and L4-5 disc protrusion/herniation as the compensable injury. The claimant testified he was injured when he fell from a ladder.

Finding of Fact No. 1.F. states that the parties stipulated that the statutory date of maximum medical improvement (MMI) is December 23, 2017. However, the claimant did not agree to make a stipulation regarding the statutory date of MMI. Accordingly, we reform the decision by striking Finding of Fact No. 1.F. in its entirety to conform to the stipulations made by the parties at the CCH.

**BFOE**

28 TEX. ADMIN. CODE § 129.6(c) (Rule 129.6(c)) provides, in part, that a copy of the Work Status Report (DWC-73) on which the offer is being based shall be included with the offer. In a letter dated November 22, 2016, the employer made an offer of employment to the claimant based on a DWC-73 dated November 10, 2016, from (Dr. D), the treating doctor. The letter noted that Dr. D's DWC-73 was attached to the offer. The signature block in all copies of Dr. D's DWC-73 in evidence are blank. Rule 129.5(c) requires, in part, that the DWC-73 be signed. See Appeals Panel Decision (APD) 042765, decided December 8, 2004. The unsigned DWC-73 does not comply with Rule 129.5(c) and therefore cannot be relied upon for purposes of Rule 129.6. Accordingly, we reverse the ALJ's determination that the employer tendered a BFOE to the claimant, and we render a new decision that the employer did not tender a BFOE to the claimant.

## **DISABILITY**

The Appeals Panel has stated on numerous occasions that the issues of BFOE and disability are distinct. APD 001143, decided July 3, 2000. Section 401.011(16) defines “disability” as “the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage;” a BFOE is used to determine the amount of temporary income benefits due, if any. When disability and BFOE are both specifically raised as disputed issues, if it is determined that there has not been a valid BFOE tendered, the job offer may still be considered by the fact finder in determining whether the injured employee has disability. See APD 020352, decided April 3, 2002; and APD 042385, decided November 19, 2004. The ALJ’s determination that the claimant did not have disability from December 6, 2016, through December 22, 2017, resulting from an injury sustained on (date of injury), is supported by sufficient evidence and is affirmed.

## **SUMMARY**

We affirm the ALJ’s determination that the claimant did not have disability from December 6, 2016, through December 22, 2017, resulting from an injury sustained on (date of injury).

We reform the ALJ’s decision by striking Finding of Fact No. 1.F. in its entirety to conform to the stipulations made by the parties at the CCH.

We reverse the ALJ’s determination that the employer tendered a BFOE to the claimant, and we render a new decision that the employer did not tender a BFOE to the claimant.

The true corporate name of the insurance carrier is **TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
d/b/a CSC-LAWYERS INCORPORATING SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge