

APPEAL NO. 210457
FILED MAY 20, 2021

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 January 14, 2021, and February 11, 2021, with the record closing on February 22, 2021, 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 did tender bona fide offers of employment (BFOE) to the appellant (claimant) on June 10, 2020, June 24, 2020, July 15, 2020, and August 14, 2020; thus, the respondent (carrier) is entitled to adjust the post-injury weekly earnings beginning on June 19, 2020, and continuing through the date of the CCH; (2) the claimant did not have disability on June 11, 2020, and June 12, 2020, resulting from the compensable injury sustained on (date of injury); and (3) the claimant had disability beginning on June 13, 2020, and continuing through the date of the CCH, resulting from the compensable injury sustained on (date of injury). The claimant appealed, disputing the ALJ's determination of BFOE. The carrier responded, urging affirmance of the disputed issue.

The ALJ's determinations that the claimant did not have disability on June 11, 2020, and June 12, 2020, resulting from the compensable injury sustained on (date of injury); and that the claimant had disability beginning on June 13, 2020, and continuing through the date of the CCH, resulting from the compensable injury sustained on (date of injury) were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

The claimant, a packer, was injured on (date of injury), when her left hand was caught in a machine. The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and the carrier accepted an amputation to the left middle finger and a fracture to the left index finger as the compensable injury.

The ALJ is the sole judge of the weight and credibility to the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are 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).

BFOE

As mentioned above, the ALJ determined that the employer did make BFOEs to the claimant in this case. In the Discussion section of the decision, the ALJ stated that “[t]he offers of employment were made in accordance with [28 TEX. ADMIN. CODE § 129.6(c) Rule] 129.6(c).” This is supported by sufficient evidence. However, the ALJ mistakenly refers to the date of one of the BFOEs as June 24, 2020, instead of June 25, 2020. Accordingly, we reform all references of a June 24, 2020, BFOE to a June 25, 2020, BFOE, including in Finding of Fact No. 3, Finding of Fact No. 4, Conclusion of Law No. 3, the Decision section, and the Decision and Order section, to conform to the evidence.

SUMMARY

We affirm as reformed Finding of Fact No. 3 that the claimant was offered a modified duty position as a plant security worker on June 10, 2020, June 25, 2020, July 15, 2020, and August 14, 2020.

We affirm as reformed Finding of Fact No. 4 that the offers of employment dated June 10, 2020, June 25, 2020, July 15, 2020, and August 14, 2020, comply with the requirements of Rule 129.6.

We affirm as reformed Conclusion of Law No. 3 that the employer did tender BFOEs to the claimant on June 10, 2020, June 25, 2020, July 15, 2020, and August 14, 2020; thus, the carrier is entitled to adjust the post-injury weekly earnings beginning on June 19, 2020, and continuing through the date of the CCH.

We affirm as reformed that portion of the decision that the employer did tender BFOEs to the claimant on June 10, 2020, June 25, 2020, July 15, 2020, and August 14, 2020; thus, the carrier is entitled to adjust the post-injury weekly earnings beginning on June 19, 2020, and continuing through the date of the CCH.

The true corporate name of the insurance carrier is **OLD REPUBLIC 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 78701-3218.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge