

**ADVISORY NO. 335**  
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**TOPIC: BONA FIDE OFFER LETTERS**

In Advisory 282, we noted: “Rule 129.6 prescribes new requirements for bona fide offers. The rule is very specific and must be followed strictly.” A sample letter was attached for distribution to your insureds. A similar letter is available on the TWCC web site at <http://www.twcc.state.tx.us/commission/divisions/rtwcover.html>.

Since we released Advisory 282 the Appeals Panel has been very consistent in strictly applying subsections (b) and (c) of Rule 129.6. (See, e.g., Appeal No. 021021). Although we believe the reading to be hyper-technical and inconsistent with the language contained in the preamble (see the editor’s comment on pages 405-406 in the 2002 *FOL Manual*), we doubt that the Appeals Panel is likely to reverse their chosen course.

Regardless of whether the Appeals Panel is properly applying the rule, the rule clearly precludes unilateral suspension of TIBs based upon a purported offer of employment without review and verification of the offer’s compliance with the rule by the handling adjuster. The rule requires that the carrier be in possession of the offer as sent to the claimant so that the adjuster may review it. DO NOT rely upon oral assurance of the offer. You must review the actual offer. If the offer does not strictly comply, the carrier may not suspend.

If the adjuster determines that the offer does not comply with the rule, then we suggest that the adjuster contact the insured and request that an offer be issued that complies with the rule. The rule does allow you to request a BRC if you disagree with the strict application of the rule, however.

There are several common issues we have seen that will preclude an offer from being determined to comply.

1. The offer does not have a copy of the TWCC-73 attached to it;
2. The offer is not specific as to the physical and time requirement the position will entail;
3. The offer merely states that the claimant’s hours and rate of pay will be equivalent to the preinjury rate, rather than specifically listing them;
4. The offer does not give the physical address of the place of employment;
5. The offer does not contain 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; or
6. The claimant is not given a full seven days to accept or reject the offer from the date the claimant receives or is deemed to have received the offer.

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Nevertheless, a claimant is not free to simply refuse to return to work when the insured's offer, while not in strict compliance with the rule, is still made in good faith. To prove disability, the claimant must be unable to "obtain" employment because of the injury. A rejection of a good faith offer may preclude a finding of disability pursuant to Appeals Panel decisions 91045 and 012646. Therefore, where the claimant has rejected an offer of employment made in good faith, we advise you to request a benefit review conference on *both* the issues of disability and bona fide offer.