

APPEAL NO. 93974

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S. art 8308-1.01 *et seq.*), a contested case hearing was held in (city), Texas on September 29, 1993, (hearing officer) residing as hearing officer. Because of his incarceration, the appellant (claimant) was not present but was a participant via speaker telephone. The hearing officer determined that the claimant did not have disability after February 12, 1992, the day he was incarcerated. The claimant appeals urging that his disability should not be held to stop merely because of his incarceration. The respondent (carrier) argues that prior Appeals Panel decisions holding that incarceration stops disability under the 1989 Act support the decision of the hearing officer.

DECISION

Finding sufficient evidence to support the findings and conclusions of the hearing officer and a correct application of the law, we affirm.

Claimant suffered a work related injury to his back on (date of injury). Appropriate medical expenses and temporary income benefits under the 1989 Act were apparently being paid by the carrier. The claimant was incarcerated on February 12, 1993, and remained so at the time of the hearing. Although the carrier at the hearing contended that it was entitled to suspend temporary income benefits because of the claimant's earlier abandonment of medical treatment, the hearing officer ruled in claimant's favor. However, the hearing officer determined that because of the claimant's incarceration on February 12th, he did not have disability, as defined in the 1989 Act, for such period of time that he remains incarcerated. The hearing officer's order states that the claimant "remains entitled to medical treatment reasonably required by the nature of his injury and may re-establish his right to temporary income benefits if he can establish disability exists prior to reaching maximum medical improvement."

The claimant stated that he was incarcerated as of February 12, 1993, and remains so. He also indicated that he is periodically being treated for his injury. Under these circumstances, the hearing officer's findings, conclusions and decision are supported in law and in fact. The Appeals Panel has previously held that while a claimant is incarcerated, disability, as defined under the 1989 Act, stops. Texas Workers' Compensation Commission Appeal No. 93288, decided May 28, 1993; Texas Workers' Compensation Commission Appeal No. 93352, decided June 28, 1993; Texas Workers' Compensation Commission Appeal No. 92674, decided January 29, 1993; Texas Workers' Compensation Commission Appeal No. 93415, decided July 5, 1993. The thrust

of these decisions apply to the facts and circumstance of this case. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge