

APPEAL NO. 94023
FILED FEBRUARY 10, 1994

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held in (City), Texas, on December 8, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) sustained a compensable back injury on (date of injury), and "had disability as a result of his injury beginning on August 10, 1993, and continuing through October 17, 1993, and does not have disability after that time." Claimant "takes exception" to and appeals only the language "and does not have disability after that time," and asks that we modify the hearing officer's Decision and Order. Respondent (carrier) points out not only is there sufficient evidence to support the hearing officer's decision, the claimant appears to misconstrue the meaning of disability under the 1989 Act.

DECISION

The hearing officer's Decision and Order are affirmed.

Two issues were presented for resolution at this contested case hearing: did claimant sustain a compensable injury on (date of injury); and, if so, did the claimant have disability as a result of such injury and for what period. The first issue is not under appeal and will not be discussed except to note that the claimant had settled two prior back injury claims from 1987 and 1989 and that the hearing officer found a new injury (aggravation of the prior back condition) on (date of injury). The uncontroverted evidence on the issue of disability, and the period of disability, as it relates to the matter under appeal was that the claimant did not work following the (date of injury) until he obtained a new job with another employer on October 18, 1993, at a wage rate greater than the wage he earned on the job where he was injured. According to his testimony, he was still employed at this new job at the time of the hearing.

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." The evidence clearly establishes that after October 17, 1993, the claimant did not have disability and this is what the hearing officer correctly determined. That is not to say that disability could not possibly recur at some future time which could result in a future proceeding. We have previously stated that it is possible for an injured employee to go in and out of disability over the course of time. Texas Workers' Compensation Commission Appeal No. 93994, decided December 8, 1993; Texas Workers' Compensation Commission Appeal No. 93663, decided September 25, 1993.

Finding no merit to the asserted error, the hearing officer's Decision and Order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge