

APPEAL NUMBER 94983
FILED SEPTEMBER 6, 1994

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 June 3, 1994, in (City), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were maximum medical improvement (MMI), impairment rating (IR) and disability. The parties entered into an agreement that the appellant (claimant herein) had not attained MMI at the time of the CCH and that impairment, therefore, could not be determined. The disability issue was expanded by the agreement of the parties to request a determination of whether the claimant had disability due to the compensable injury from March 3, 1993, to the date of CCH. The hearing officer found that the claimant had disability on March 3 and 4, 1993, from June 12, 1993, to September 21, 1993, and from March 2, 1994, and continuing through the date of the CCH. The claimant appeals contending that the hearing officer wrongly failed to find disability from September 22, 1993, to March 1, 1994. The respondent (carrier herein) argues that the claimant failed to meet his burden to prove disability from September 22, 1993, to March 1, 1994, and that the decision of the hearing officer was supported by sufficient evidence.

DECISION

Unable to determine whether the hearing officer applied the correct legal standard to the issue of disability, we reverse and remand for further findings consistent with our decision.

It is undisputed that the claimant injured both his knees on _____, on the job. The claimant had surgery on his right knee on October 9, 1992, and August 4, 1993. The claimant's original treating doctor returned the claimant to return to work on March 5, 1993. The claimant returned to work, but not to his regular duties as a fitter/welder. The claimant testified that after he returned to work, he only did office work such as answering the telephone. The employer was sold to new owners about June 11, 1993, and the claimant was laid off. The claimant has not worked since this. From September 22, 1993, to March 1, 1994, the claimant drew unemployment benefits and sought employment, but was unable to find employment.

The only issue before us on appeal is whether the hearing officer erred in determining that the claimant did not have disability from September 22, 1993, to March 1, 1994. The claimant contends that the hearing officer erroneously found no disability during this period because he drew unemployment benefits and this is contrary to our prior decisions. The claimant specifically refers to Texas Workers' Compensation Commission Appeal No. 92198, decided July 3, 1992, and Texas Workers' Compensation Commission Appeal No. 92539, decided November 25, 1992.

It is unclear that the fact the claimant drew unemployment benefits is the rationale for the hearing officer's decision. She does not so state in her findings or her discussion.

Yet we do not find anything in the medical records or the testimony of the claimant which appears to distinguish this period of time from the preceding or following periods of time in regard to the claimant's ability to earn his preinjury wages. Further, this period (from September 22, 1993 to March 1, 1994) is exactly the period during which the claimant drew unemployment benefits. As the claimant points out, we have previously held that the obtaining of such benefits is not in and of itself a bar to disability, and a claimant is free to present evidence to refute the representation made to the Texas Employment Commission that he or she is able to work. While we will certainly not presume that the hearing officer based her decision on an inappropriate rationale, to review the decision of the hearing officer, we must be able to understand her rationale. See *generally* Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994; Texas Workers' Compensation Commission Appeal No. 93770, decided October 11, 1993. We therefore remand this case for the hearing officer to make explicit findings providing her rationale.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge