

APPEAL NO. 990153

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 2, 1998, a hearing was held. He (hearing officer) determined that the appellant (claimant) was not tendered a bona fide offer of employment, but that he did not have disability from September 10, 1998, to the date of the hearing. Claimant asserts that certain findings of fact are in error and disagrees that he was released to full duty. Respondent (carrier) agrees with claimant as to one finding of fact, but disagrees with claimant's assertion that he was not returned to full duty, and asks for affirmance.

DECISION

We reverse and remand.

Claimant worked for (employer) on _____, when he injured his left lower back pulling a cabinet. There were only two issues, bona fide offer of employment and disability, and the finding of no bona fide offer of employment was not appealed.

The issue of disability was set forth in terms of whether there was disability from September 10, 1998, to the present (date of the hearing), because the evidence showed that claimant received temporary income benefits prior to that time.

The claimant had worked out of his home at the time of the injury; he traveled routinely and there was testimony that at the time of accident there was little usable office space. The claimant assisted in setting up cabinets of spare parts at various airports for private planes. Claimant is also a chiropractor, with a limited practice both before and after the injury. Claimant had continued to work out of his home after the accident for employer with some limitations, but at sometime in June 1998 he came under a different supervisor, who told him to return to the office to work. Claimant said he needed to have therapy available during the day to be able to work. Claimant went into an off-work status. By August 17, 1998, claimant said that he felt he had no future in this employment (and said he thought he would be fired anyway), so he resigned.

There are two problems with the findings of fact as set forth. The first was recognized by the carrier in its response; carrier agrees that Finding of Fact No. 14, which said that claimant was "released to return to regular job duties" by a physical therapist on August 18, 1998, is not supported by sufficient evidence. The entry of August 18, 1998, by (Center) lists among "Long Term Goals 12 weeks--discharge goals," as the number five goal, "return to regular job duties." This note does not release claimant as of August 18, 1998. Finding of Fact No. 14 is reversed.

Two other findings of fact appear to be in conflict. Finding of Fact No. 17 said that claimant "was returned to full duty status by his treating doctor contingent on having accessibility to therapeutic treatment" as of September 9, 1998, while Finding of Fact No.

19 said that "disability ended on September 9, 1998 when he was released to return to full duty status by his treating doctor."

While no document of Dr. C, the treating doctor, is dated September 9, 1998, Dr. C did refer to that date in a letter dated October 2, 1998; that letter was stated to be an attempt to clarify a phone conversation with an adjuster. It said, "an initial response date was 9-9-98 as to his return to full duty. However, after further reflection and consultation with [claimant], I want to make it clear that his return to full duty status would be contingent upon the accessibility of therapeutic intervention."

The hearing officer upon remand should consider whether claimant was medically released to work in the period in issue, and, if so, the character of that release (conditional or not conditional). See Texas Workers' Compensation Commission Appeal No. 961641, decided October 3, 1996, and Texas Workers' Compensation Commission Appeal No. 970522, decided April 30, 1997. *Compare to* Texas Workers' Compensation Commission Appeal No. 972275, decided December 22, 1997, in which there was a medical opinion from an IME doctor which said that claimant "was able to work without restriction," to serve as a basis for affirming a determination of no disability. After determining the medical release question, a determination as to disability should thereafter be provided.

We note that the decision in this case was not tied to the date claimant resigned. See Texas Workers' Compensation Commission Appeal No. 970089, decided February 28, 1997, which said that a resignation does not, necessarily, determine whether disability does or does not exist.

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.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge