

APPEAL NO. 990605

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 1, 1999, a contested case hearing was held. The issue concerned whether the appellant, who is the claimant, had disability from her compensable injury for the period after June 29, 1998; whether the Texas Workers' Compensation Commission (Commission) abused its discretion in approving a change of doctor to Dr. B; and whether the respondent (carrier) was liable for reimbursement of expenses for transportation to Dr. B's office.

The hearing officer determined that discretion was not abused by the Commission when it approved a change to Dr. B and that the carrier was liable for benefits relating to transportation in the amount of \$744.80. The hearing officer also found that the claimant did not have disability for the period after June 29, 1998, through the date before she returned to work on November 1, 1998.

The claimant appeals the determination on disability, generally asserting that the hearing officer erred and the reason for this contention is not set forth in the appeal. The carrier responds by reciting evidence in favor of the disability contention. Issues relating to change of treating doctor and reimbursement for travel expenses were not appealed.

DECISION

Affirmed.

The hearing officer has fairly summarized the evidence in the decision. The claimant said she was injured on _____, while lifting some boxes at work. Claimant had, after her injury, returned to work at a produce company for various periods of time. She was initially released by her first treating doctor, Dr. P, and returned to work in October 1997. She was taken off work by Dr. B from January through June 1998. After that time, Dr. B had problems which prevented his continuation as claimant's treating doctor. Objective EMG testing by Dr. B was normal.

The claimant said that she was treated by doctors in (Country) after Dr. B became unavailable. Claimant just generally asserted inability to work, saying she felt bad and had trouble bending. Part of the reason she could not work was due to pain in her head and neck. However, some evidence was developed that she had hypertension (which a carrier's doctor had cited as the basis for her headaches) and had been involved in a motor vehicle accident in 1995 which caused her to lose work for four months. Claimant stated she had no recollection at all of her visit to the carrier's doctor. The claimant had returned to work around the first day of November 1998. She asserted that her condition after Dr. B ceased acting as her doctor was similar to when she was seeing him and being taken off work.

She had contacted her employer at the time of her injury to see if there might be any type of work she could do, and asserted she was told there was not. Claimant contended that when she had worked later in 1997, she could not lift individual tomatoes into a box because she could not bend.

Temporary income benefits are due when an injured worker has not reached maximum medical improvement and has disability. Section 408.101(a). Section 401.011(16) defines "disability" as: "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The determination of whether this status existed was for the hearing officer to determine. In reviewing the evidence, we cannot agree that the hearing officer's decision is so against the great weight and preponderance of the evidence as to compel our reversal. Her determination was sufficiently supported by the evidence.

We accordingly affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge