

APPEAL NO. 990688

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in two settings on October 15, 1998, and February 17, 1999. With respect to the issues before him, the hearing officer determined that the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, and that he had disability as a result of his compensable injury from January 28 to February 3, 1997, and from February 18 to June 15, 1997. In his appeal, the claimant argues that the hearing officer erred in failing to make a finding as to whether the claimant had disability for the period from August 1998 until February 8, 1999, and asks that we remand the case for the hearing officer to make a disability finding for that period. In its response, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determinations that the claimant sustained a compensable inguinal hernia injury on \_\_\_\_\_, and that he had disability as a result of that injury from January 28 to February 3, 1997, and from February 18 to June 15, 1997. Thus, those determinations have become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

As noted above, it is undisputed that the claimant sustained a compensable inguinal hernia injury on \_\_\_\_\_, in the course and scope of his employment as a stocker at (employer), while he was lifting a case of toilet paper. It is also undisputed that the claimant had been diagnosed with cirrhosis and ascites, with a history of primary peritonitis prior to his compensable injury. The claimant initially treated for his compensable injury with Dr. C, who diagnosed a right inguinal hernia. Dr. C referred the claimant to Dr. W, a general surgeon. On January 31, 1997, Dr. W examined the claimant and confirmed the diagnosis of a right inguinal hernia. The claimant had follow-up visits with Dr. W on February 20, 1997, and March 20, 1997. Dr. W's office notes provide that because of the claimant's advanced cirrhosis and ascites, he would need to proceed with a liver transplantation before his hernia could be surgically repaired.

The claimant testified that his job as a stocker was a secondary job and that his primary job was that of a civilian desk sergeant at a military facility. The claimant stated that he continued to work as a desk sergeant after his compensable injury until on or about June 15, 1997, when he was given a medical retirement after he developed encephalopathy, a condition associated with the cirrhosis, which was described as being similar to Alzheimer's disease. The claimant was apparently removed from that position because he was required to carry a firearm and his employer did not want him to do so with a mental impairment. The claimant underwent liver transplant surgery on January 18, 1998. The claimant testified that he was released to return to work following the transplant surgery on August 13 or 15, 1998. The claimant testified that he began working as a porter for a car company on February 8, 1999, making more than his preinjury wage.

The claimant made no claim for disability for the period from June 15, 1997, to August 1998; therefore, the only question before us, is whether the hearing officer erred in not making a determination as to the claimed disability period from August 1998, until February 8, 1999. The hearing officer ended disability on June 15, 1997, the date the claimant was required to take a medical retirement from his civil service job due to his development of encephalopathy, a mental impairment related to his cirrhosis. In his discussion, the hearing officer stated that "[t]he evidence suggested that the Claimant was unable to work at any type of employment due solely to his liver condition from June 15, 1997 until August of 1998 when he was released to [return] to duty." We are somewhat puzzled by the hearing officer's statement. In an unappealed finding, the hearing officer determined that the claimant had disability as a result of his compensable hernia injury from January 28 to February 3, 1997, and from February 18 to June 15, 1997. The evidence reflects that the surgical repair of the hernia had to be postponed pending liver transplantation surgery. Thus, it appears that the claimant continued to suffer the effects of the hernia even after he developed encephalopathy. The record reflects that the claimant had a liver transplant in January 1998; however, there is no indication that his hernia was surgically repaired following that surgery, as Dr. W's records contemplated. The hearing officer does not explain how the claimant's development of another, albeit extremely serious, medical condition served to cancel out the effect of the hernia on the claimant's ability to obtain and retain employment, particularly after that serious medical condition was remedied. See Texas Workers' Compensation Commission Appeal No. 980772, decided June 3, 1998, and Texas Workers' Compensation Commission Appeal No. 981860, decided September 23, 1998. Nevertheless, the claimant is not making a claim for disability for the period from June 15, 1997, to August 1998, thus, we need not further discuss that period. However, the portion of the hearing officer's decision quoted above, seems to demonstrate that the hearing officer believes that the claimant was released to return to work from the standpoint of his liver transplant surgery in August 1998. At that point, the claimant's hernia apparently remained untreated. Accordingly, a question exists as to whether the claimant's unrepaired hernia condition would then reestablish disability for the period from August 1998 to February 8, 1999, when he began working for another employer making more than his preinjury wage. The hearing officer did not make a finding as to whether the claimant had disability in that period, although that question was before him for resolution. Thus, we reverse and remand for the hearing officer to make findings and conclusions as to whether the claimant had disability for the period from August 1998 to February 8, 1999.

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.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Joe Sebesta  
Appeals Judge