APPEAL NO. 000245

This appeal arises pursuant to Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 15, 1999, a hearing was held. The hearing officer provided a decision on January 13, 2000, in which she held that appellant (claimant) had disability from July 22, 1999, to October 19, 1999. (Claimant had been injured on _____, and a prior hearing had determined that disability was incurred until July 21, 1999, the date of that hearing.) Claimant asserts that disability should be continuing through the date of this hearing since he had not been released to return to work and said that he was in work-hardening. Respondent (carrier) attacks the finding of any disability, citing the prior decision which ended disability on July 21, 1999; an intervening motor vehicle accident on _____; and the fact that Dr. B did not say claimant should not work at all until September 22, 1999. The appeals file contains no reply to either appeal.

DECISION

We affirm.

Claimant injured his low back and cervical spine in a collision between a car and the bus he was driving for his employer on _____. Thereafter, he was in another collision involving his pick up truck and a concrete barrier on _____. There were no medical records relating to the latter accident admitted at this hearing. There is no assertion of error in regard to the ruling against admitting such medical records.

While carrier states that the _____, injury is the reason why claimant may not have been able to work, there was no issue of sole cause in this hearing. In addition, no records of treatment relative to such accident were in evidence. The _____ injury does not require reversal of the hearing officer's finding of disability. Similarly, a prior hearing officer's finding of disability until the date of that hearing is based upon Appeals Panel rulings indicating that a fact finder cannot determine disability relative to future dates, in part, because disability is something that may cease or recur from time to time. The determination at the prior hearing as to disability does not require reversal of this hearing officer's finding of disability. Carrier also states that Dr. B did not take claimant "completely off work" until September 22, 1999. While not acknowledging that a claimant has to be completely off work to have disability, the facts show other references by Dr. B to not being able to work. Dr. B's September 22, 1999, document is an "off work request," but Dr. B, in "interim reports" dated June 24, 1999; August 6, 1999; and September 27, 1999, all say the same thing: the consistency of the data, from the evaluation of the patient's subjective complaints and the objective examination, revealed that [claimant] will be temporarily, totally precluded from regular work duties. While the reference to "regular work duties" could be interpreted to mean that some limited work may be allowed, Dr. B's reports contain no restrictions and otherwise do not allude to some limited type of work as a possibility. There is sufficient evidence in the record for the hearing officer to have determined that there was disability from July 22, 1999, to October 19, 1999.

Claimant argues that Dr. B has not released him. Claimant also stated that he is now in work-hardening. The hearing officer, in her Statement of Evidence, indicates that medical evidence after October 19, 1999, is silent as to work status; she adds that the severity of the injury, occurring seven months before, does not show that disability would necessarily continue even though claimant testified that it did and referred to his work-hardening. The records discussed in the prior paragraph show Dr. B as having addressed the ability to work at least at intervals of approximately six to seven weeks. Dr. B's reports that referred to treatment provided in October 1999 do not address ability to work and a questionable sentence appears in Dr. B's report of October 14, 1999. In that report Dr. B said, "[claimant] indicates his current work status is off work." The hearing officer could reasonably infer that Dr. B, by making a note of claimant's opinion as to his work status, was not at that time telling claimant not to work. In addition, with a benefit review conference having been held on October 27, 1999, claimant could have exchanged medical records up to at least November 11, 1999, in a timely manner. In addition, he could request admittance of other medical records received after that date but before the hearing on December 15, 1999. Claimant offered no medical documents more recent than the October 19, 1999, note, however. Whether Dr. B provided another "interim report" in November or not, Dr. B's regularity in providing past treatment notes indicates that more such notes would be available after the one of October 19, 1999. In this instance, we cannot say that the hearing officer's observation that medical evidence does not show disability beyond October 19, 1999, was error and that such a factor, along with the hearing officer's consideration of the severity of the injury, could be used to determine the ending date of disability.

While claimant's medical records do not say that he is in a work-hardening program, the fact finder could credit claimant's testimony that he is currently undergoing such a program. In addition, the fact finder could find that such a program is evidence of a continuing inability to work, but such a program may also be considered in the overall context of treatment in determining whether disability continues or not. In another area, work-hardening has been considered, in some circumstances, not to be a bar to certification of maximum medical improvement (MMI) and, in others, to delay MMI until completed.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge