

## APPEAL NO. 000529

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 on February 3, 2000. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) had disability as a result of his compensable injury from August 10 to August 16, 1999, and from October 27, 1999, through the date of the hearing. In its appeal, the appelliant (carrier) asserts error in the hearing officer's determination that the claimant had disability from October 27, 1999, through the date of the hearing. The appeals file does not contain a response to the carrier's appeal from the claimant. The carrier did not appeal the hearing officer's determination that the claimant had disability from August 10 to August 16, 1999, and that determination has become final pursuant to Section 410.169.

### DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that the claimant is an undocumented alien; that he presented false information about his alien status when he was hired on May 18, 1994; that due to his compensable injury the claimant was unable to work from August 10, to August 16, 1999; that the claimant worked light duty at full wages for the employer from August 17 to September 28, 1999; that on September 29, 1999, the claimant was laid off due to his undocumented alien status; that in the period from September 29, 1999, through the date of the hearing the claimant earned no wages and was physically unable to perform the job he was doing at the time of his injury; and that the claimant's light-duty restrictions have remained unchanged since August 17, 1999. At issue in this case is the effect of the claimant's undocumented status on his disability claim following September 29, 1999, the date his employment was terminated because of that status.

The hearing officer determined that the claimant did not have disability for the period from September 29, 1999, to October 26, 1999. In so finding, the hearing officer noted that the claimant had returned to a light-duty position with the employer on August 17, 1999, at full wages; that he had continued working in that position until he was laid off because of his alien status; and that there was no reason to believe that the claimant could not have continued working but for his alien status. Thus, the hearing officer concluded that "[u]nder these circumstances, his injury was not a cause of him not working. The only cause for him not working beginning on 9-29-99 was his undocumented alien status." The hearing officer's determination in that regard is consistent with our decision in Texas Workers' Compensation Commission Appeal No. 94211, decided April 6, 1994. However, the hearing officer further determined that on October 27, 1999, Dr. L. D. C., the claimant's treating doctor, placed him in an off-work status and, as such, the claimant reestablished disability as of October 27, 1999, which continued through the date of the hearing, February 3, 2000. In its appeal, the carrier argues that the hearing officer's determination that the claimant had reestablished disability on

October 27, 1999, based on a change in the claimant's work status, is in direct conflict with the parties' stipulation that the "claimant's light duty restrictions have remained unchanged since 8-17-99." The carrier's argument in that regard is well-taken. By making stipulations, the parties established the facts to which the hearing officer was required to apply the law. He was without the authority to disregard the parties' stipulation that the claimant's light-duty work status had remained unchanged and to make a factual determination in direct conflict with that stipulation. The hearing officer erred in finding that the claimant's work status changed as of October 27, 1999. Rather, he was required to accept the parties' stipulation that no such change had occurred. Accordingly, the hearing officer also erred in determining that the claimant had reestablished disability as of October 27, 1999, which continued through the date of the hearing. We reverse the hearing officer's determination that the claimant had disability from October 27, 1999, through the date of the hearing and render a new decision that the claimant did not have disability for the period from September 29, 1999, to the date of the hearing.

The hearing officer's determination that the claimant had disability from October 27, 1999, through the date of the hearing is reversed and a new decision rendered that the claimant did not have disability for the period from September 29, 1999, through the date of the hearing, February 3, 2000.

Elaine M. Chaney  
Appeals Judge

CONCUR:

Gary L. Kilgore  
Appeals Judge

Alan C. Ernst  
Appeals Judge