

APPEAL NO. 001001

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 March 28, 2000. The hearing officer determined that the appellant/cross-respondent (claimant) sustained a compensable injury on _____; and that he did not have disability. Claimant appealed the disability determination, contending that disability did not end on June 10, 1999. In its cross-appeal, the respondent/cross-appellant (carrier) challenged both the injury and disability determinations on sufficiency grounds. Claimant responded that the hearing officer's determinations that Claimant sustained a compensable injury and that he had disability through June 10, 1999, is correct, and also that disability continued beyond that date. The file did not contain a response by carrier to Claimant's appeal.

DECISION

We affirm in part and reverse and remand in part.

Carrier contends the hearing officer's determination that Claimant sustained a compensable injury is not supported by sufficient evidence. Carrier asserts that Claimant's testimony regarding the injury was not consistent and that Claimant admitted he had transient pain that resolved in a short period of time.

The applicable law and our appellate standard of review are stated in Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Section 401.011(26); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In this case, the evidence conflicted regarding whether Claimant was injured. Claimant testified that he was injured when Mr. T drove off while claimant was still trying to get into the back of the truck Mr. T was driving. Mr. T denied that he drove off before claimant got in the truck. The hearing officer heard the testimony and reviewed the medical evidence and resolved the conflicts in the evidence. She determined that Claimant sustained a "low back strain and a medial right thigh muscle strain" on _____. We will not substitute our judgment for the hearing officer's because her determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Carrier next challenges the sufficiency of the evidence to support the hearing officer's disability determination. Carrier asserts that claimant did not have disability because: (1) claimant said he did not have to work because his girlfriend would support him; and (2) claimant said he could work but that he would not take "just any job." Claimant also appealed the disability determination, contending that disability did not end on June 10, 1999. Claimant asserts that: (1) he was taken off work for one week and then released to light-duty work on May 27, 1999; (2) his employer did not have any light-duty

work and did not make a bona fide offer of employment; (3) he found light-duty work with another employer and worked there from July 7, 1999, to August 9, 1999, but said he was fired later after he reported a violation of a federal regulation; (4) the hearing officer failed to consider claimant's ability to perform his usual job duties after the injury; and (5) no doctor has stated that claimant reached maximum medical improvement (MMI).

The applicable standard of review and the law regarding disability is set forth in Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995. In a _____, Initial Medical Report (TWCC-61), Dr. O stated that Claimant could return to limited work on May 27, 1999, and that he could return to full-time work on June 1, 1999. The evidence from Dr. O and claimant's testimony support the hearing officer's determination that claimant had some period of disability after _____. The hearing officer stated that claimant saw Dr. O on June 10, 1999, but there is no medical evidence dated after May 27, 1999. In his testimony, claimant indicated that he continued to have problems after that time, but that carrier would not pay for treatment. He said he saw Dr. O only twice and medical records indicate that this was on _____, and May 27, 1999. Claimant did not testify regarding the exact period of disability after May 27, 1999. We also note that the hearing officer stated that Dr. O certified an MMI date, but the record reflects that no doctor certified that claimant reached MMI or that he reached MMI on June 10, 1999.

We must remand this case to the hearing officer to reconsider the ending date of disability in this case. We note that even if MMI had been certified, that does not mean that disability ended on that date. The hearing officer should make findings of fact regarding the ending date of disability and explain the basis for the determination regarding the ending date of disability.

We affirm that part of the hearing officer's decision that determines that claimant sustained a compensable injury. We reverse the hearing officer's disability determination and remand that issue to the hearing officer for reconsideration. No further hearing or additional evidence is needed.

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.

Judy L. Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge