

APPEAL NO. 001966

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 21, 2000. The issues at the CCH were whether the claimant had sustained an injury in the course and scope of his employment on _____, to his right shoulder, arms, neck and upper back, and disability. The hearing officer determined that the claimant had sustained injuries to his right shoulder and neck and had disability resulting from his injuries beginning on December 9, 1999, and continuing through February 25, 2000. The claimant appealed the hearing officer's determinations that disability ended on February 25, 2000. The claimant did not appeal the hearing officer's determination that there was no injury proven to the arms or upper back and that determination has become final. The respondent (self-insured) replies that the hearing officer's decision and order are supported by the evidence and should be affirmed.

DECISION

Reversed in part, reversed and remanded in part.

The claimant worked for (the self-insured) on _____ as a bus driver. He testified that as he was making a right hand turn from a stop light the power steering on the bus went out, causing the steering wheel to jerk to the left. The jerking of the steering wheel caused the compensable injury to the claimant's right shoulder and neck. The claimant testified that he was unable to drive buses from December 9, 1999, through May 15, 2000, and returned to work for the self-insured on May 16, 2000.

The hearing officer made the following findings of fact:

FINDINGS OF FACT

5. Claimant sustained a neck and right shoulder injury in the course and scope of his employment on _____.
6. Due to the work injury, Claimant was unable to obtain and retain employment at wages equivalent to Claimant's pre-injury wage beginning on December 9, 1999 through February 25, 2000.

In the Statement of Evidence, the hearing officer wrote that:

Claimant was taken off work by [Dr. P] on December 9, 1999. [Dr. P] released Claimant to return to work on December 18, 1999. Medical records from December 21, 1999 from [Dr. P] indicated that Claimant was maintained in a light duty status until approximately February 1, 2000. Claimant did return to work as of May 18, 2000. However there was a video taken showing Claimant able to move easily and manipulate a bike. Coupled with the medical showing that [Dr. L] noted on February 25, 2000 that the

incident was minor, Claimant established disability from December 9, 1999 through February 25, 2000.

Our review of the evidence fails to disclose a return to work release dated December 18, 1999, although there is a December 9, 1999, opinion that the claimant would be able to return to regular duty on December 18, 1999. Dr. L's report does not address the claimant's work status. The videotape referred to by the hearing officer was obtained on two separate occasions, one in March, 2000, and the other in April, 2000. In light of the evidence presented, we are unable to determine what evidence, if any, indicates that the disability ended on February 25, 2000, rather than on some other date.

Under the circumstances of the case before us, we reverse Finding of Fact No. 6, Conclusion of Law No. 4, the decision, and the order and remand for the hearing officer to make additional findings of fact on the issue of disability, including a finding or findings on which the finding of the last day of disability is based. Since the hearing officer's decision and order that the injury included the right shoulder and neck, but not the arms and upper back, has not been appealed, that portion of the decision has become final by operation of law and need not be addressed by the hearing officer on remand.

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.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Philip F. O'Neill
Appeals Judge