

APPEAL NO. 002143

On July 28, 2000, a contested case hearing (CCH) was held in Dallas, Texas, with Victor L. Cruz presiding as the hearing officer. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed disability issue by deciding that the respondent (claimant) had disability from March 17, 2000, to March 27, 2000, and from April 3, 2000, through the date of the CCH. The appellant (carrier) requests that the hearing officer's decision that the claimant had disability from April 3, 2000, through the date of the CCH be reversed and that a decision be rendered that she did not have disability for that time period. No response was received from the claimant.

DECISION

Affirmed.

The claimant testified that she began working as a housekeeper in the employer's hotel in 1996. She said that on _____, she was at work standing on the edge of a bathtub putting up a shower curtain when she slipped and hit her lower back on the toilet bowl. She said that the employer sent her to a doctor on March 17, 2000. That doctor released the claimant to limited-duty work. The claimant said that, when she took the limited-duty release to the employer, the employer sent her home and told her to return when she had a full-duty release. The doctor that the employer sent the claimant to continued the claimant on a limited-duty release. The claimant said that the employer called her on March 27 and told her to come back to work. The claimant said that the employer provided her with light duty on March 28 and that she worked light duty until April 3. The claimant said that after working for one hour on light duty on April 3, her manager asked her when she would be able to work full duty. The claimant said that when she told her manager that she was still on restricted duty, her manager told her that her papers were not in order because she had an invalid social security number and terminated her from employment because she is an undocumented alien.

The claimant said that she began treating with Dr. O on April 5 and that Dr. O took her off work and has not released her to return to work. Dr. O testified that the claimant has lumbar sprain syndrome, myofascial pain syndrome, and lumbar herniated discs and that the claimant can only work light duty and is unable to perform the type of job she had when she was injured. According to a functional capacity evaluation done on May 31, the claimant's physical condition is at a light physical demand level and the claimant needs work hardening.

The carrier appeals the hearing officer's finding that the claimant had disability from April 3, 2000, to the date of the CCH, contending that the claimant was terminated from employment because the employer could not legally employ her. There is conflicting evidence in this case. A claimant is not precluded from establishing disability, as defined by Section 401.011(16), after being terminated from employment. The hearing officer is

the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge