APPEAL NO. 002757

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §401.001 *et seq.* (1989 Act). On October 10, 2000, a hearing was held. The hearing officer decided that the appellant (claimant) did not have disability during the period beginning on March 10, 2000, and continuing through May 30, 2000. The claimant appealed. The respondent (carrier) responded.

DECISION

Reversed and rendered.

It was undisputed that the claimant sustained a compensable injury on _____, and had intermittent periods of disability from the date of injury until the beginning of March 2000. At issue according to the benefit review conference report is the period from March 10, 2000, through May 30, 2000.

The claimant testified that she had been working under a light-duty release from March 11, 2000, through March 13, 2000, pursuant to a full-duty release from her doctor. The claimant was not scheduled to work on March 14 or 15, 2000, then returned to work on March 16, 2000, with a light-duty release due to an exacerbation of symptoms while on full duty. The claimant worked at a light-duty assignment from March 16, 2000, through April 7, 2000. On April 9, 2000, the claimant began a work-hardening program prescribed by her treating doctor. The claimant was in the work-hardening program for six hours a day from April 9, 2000, through May 8, 2000. On May 8, 2000, the claimant's treating doctor released the claimant to full duty and the claimant returned to work for the employer on May 11, 2000. The claimant testified that her treating doctor, Dr. D had taken her off work in order to administer the work-hardening program and that testimony is corroborated by a treatment note from Dr. D dated April 26, 2000, which indicates that the claimant was doing well and the claimant "could possibly be considered for returning to light duty".

The hearing officer found that the claimant had no disability during the period at issue. In doing so, the hearing officer appears to have held the claimant to a burden of proving that she had a total inability to work during the time she was attending the work-hardening program. We have consistently rejected the notion that a carrier may defeat a claim of disability by showing that an injured worker did not have a total inability to work. *See* Texas Workers' Compensation Commission Appeal No. 000205, decided March 20, 2000. As we said in Texas Workers' Compensation Commission Appeal No. 991091, decided July 5, 1999:

> As defined in the statute, disability is the inability to obtain and retain employment at the preinjury wage due to the compensable injury. While the claimant has the burden of proving he has disability as defined, case law has established that claimant may prove disability based on his testimony alone, if believed. Houston General Insurance Company v. Pegues, 514 S.W.2d

492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Whether disability exists is generally a question of fact for the hearing officer to resolve. A conditional or light-duty release is evidence that disability continues and a claimant under a light-duty release does not have the obligation to look for work or to show that work was not available.

It is uncontroverted in this matter that the claimant was working under a light-duty release when she was taken completely off work by her treating doctor to attend the work-hardening program. There is no evidence that the need for the work-hardening program was anything other than the compensable injury. The claimant's inability to obtain and retain employment from the date of the beginning of the work-hardening program, April 9, 2000, until the date the claimant was released from the program and given a full-duty work release, May 8, 2000, was clearly the result of the compensable injury. In light of the evidence in the record, the hearing officer's determination that the claimant did not have disability is so against the great weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We reverse the hearing officer's decision and render a new decision that the claimant had disability beginning on April 9, 2000, and continuing through May 8, 2000.

_____
Kenneth A. Huchton
Appeals Judge

CONCUR:

_____
Robert E. Lang
Appeals Panel
Manager/Judge

_____
Thomas A. Knapp
Appeals Judge