

## APPEAL NO. 002931

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 29, 2000, a hearing was held. The hearing officer decided that the respondent (claimant) had sustained a compensable inguinal hernia in the course and scope of his employment on \_\_\_\_\_, and had disability resulting from that injury beginning on \_\_\_\_\_, and continuing through the date of the hearing. The appellant (carrier) appealed, asserting that the hearing officer's determination that the claimant had sustained an injury in the course and scope of his employment was against the great weight of the evidence and further asserting that the claimant failed to establish disability because he had been terminated. The claimant responded that the hearing officer's decision should be affirmed.

### DECISION

We affirm the hearing officer's decision and order.

The claimant testified that he sustained an inguinal hernia in the early hours of \_\_\_\_\_, as he lifted a food cart lift galley from the floor onto his workbench. The claimant testified that as he lifted the galley up to the workbench he experienced a burning sensation and sharp pain in his groin. It is undisputed that shortly thereafter the claimant was called into the production supervisor's office and was terminated. The reason given for the termination was the claimant's inability to communicate with other employees. Later that morning, the claimant went to see his doctor, Dr. C. Dr. C diagnosed an inguinal hernia.

The hearing officer did not err in finding that the claimant sustained an injury in the course and scope of his employment on \_\_\_\_\_. The carrier asserts that the claimant reported the injury only after he was terminated, inferring that the report and the injury are retaliatory. The claimant testified that he told a coworker, Mr. M, that he had injured himself before he was called into the office and terminated. Mr. M corroborated the claimant's testimony. The hearing officer found that evidence credible and, in his role of fact finder, resolved the evidence in favor of the claimant.

After seeing the claimant on \_\_\_\_\_, Dr. C advised the claimant that he should not do any heavy lifting, later quantifying this restriction to no lifting of over ten pounds, until the hernia could be surgically repaired. The claimant testified that he has looked for work since the date of his injury, but has been unable to secure employment which comports with Dr. C's restrictions. The carrier asserts that the claimant was terminated for cause and any inability to obtain and retain employment was a result of the termination and the claimant's refusal to accept minimum wage employment, not the injury. The hearing officer found that the termination was not for good cause and found disability from \_\_\_\_\_, through the date of the hearing.

While we neither necessarily agree nor disagree with the hearing officer's conclusion that the claimant's termination was not for good cause, an analysis of the cause for the termination is unnecessary in this particular case. In Texas Workers' Compensation Commission Appeal No. 001637, decided August 29, 2000, we stated:

Critical to the resolution of a disability issue is the determination that the inability to earn the preinjury wage was a result of the compensable injury. In this regard, we have noted that termination for cause does not necessarily preclude disability, but may be considered by the hearing officer in determining why a claimant is unable to earn the preinjury wage. [Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991]. Thus, disability can continue after termination if a cause of the inability to earn the preinjury wage after termination was the compensable injury. Texas Workers' Compensation Commission Appeal No. 93850, decided November 8, 1993. We have also held that the 1989 Act does not "impose on an injured employee the requirement to engage in new employment while still suffering some lingering effects of his injury unless such employment is reasonably available and fully compatible with his physical condition and generally within the parameters of his training, experience, and qualifications. On the other hand, we do not believe the 1989 Act is intended to be a shield for an employee to continue receiving temporary income benefits where, taking into account all the effects of his injury, he is capable of employment but chooses not to avail himself of reasonable opportunities. . . ." Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991.

We note the offered wages under a bona fide offer of employment will be treated as postinjury earnings even if an injured employee declines the offer. Although the claimant sought employment in this case, there was no evidence that any job offers had been made, much less any offers that would rise to the level of a bona fide offer of employment. The hearing officer did not err in finding that the claimant's inability to obtain and retain employment from \_\_\_\_\_, through the date of the hearing was a result of the compensable injury.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when, as here, the hearing officer's determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We affirm the hearing officer's decision and order.

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Kenneth A. Huchton  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge