

## APPEAL NO. 010205

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 8, 2001, the hearing officer resolved the sole disputed issue by finding that due to her injury the appellant (claimant) was unable to obtain and retain employment at wages equivalent to her preinjury wages from April 7, 2000, through October 1, 2000, and by concluding that the claimant had disability from April 7, 2000, through October 1, 2000. The claimant has appealed, asserting that the evidence established that she had disability through the date of the hearing because she had not been released to full duty. The claimant also asserts error in the "Decision" portion of the hearing officer's Decision and Order in that it ends the period of disability on June 15, 2000, rather than on October 1, 2000, as was determined in the pertinent finding of fact and conclusion of law. The respondent (self-insured) urges in response that the claimant's disability ended on June 15, 2000. However, the self-insured's response cannot be considered as an appeal of the period of disability beyond June 15, 2000, because the response was not timely filed as an appeal.

### DECISION

Affirmed as reformed.

The claimant testified that after injuring her back at work in the employer's hospital on \_\_\_\_\_, when lifting a table, she was first treated in the employer's emergency room; that she was subsequently treated by her primary care physician; that she changed treating doctors to a neurologist because her primary care doctor did not treat workers' compensation injuries; that she failed to improve under the neurologist's care; and that on June 21, 2000, she commenced chiropractic treatment with her current treating doctor, Dr. N, to whom she was referred by her attorney. She stated that Dr. N initially took her off work; that in September 2000 he released her for light-duty work after she underwent a functional capacity evaluation (FCE); and that she has not yet been released by Dr. N for full-duty work. The claimant also testified that she was employed at the hospital as a ward clerk but performed a variety of tasks in addition to handling paperwork and that her employment was terminated in June 2000 because her medical leave expired.

The report of the September 8, 2000, FCE stated that the claimant exhibited no deficits in strength or mechanics and demonstrated adequate biomechanical tolerance for sustained activity, and that in the opinion of the evaluator, she can function independently in the competitive labor market with or without accommodation. Dr. C, a designated doctor, reported on August 25, 2000, that the claimant would reach maximum medical improvement on October 1, 2000.

While the claimant is correct in asserting that the Appeals Panel has held both that disability may be proven by the testimony of the claimant alone and that a restricted release to work is evidence that disability continues, such evidence alone is not binding on

the hearing officer, who is the finder of fact and who evaluates all the evidence bearing on the claimant's ability to obtain and retain employment at the preinjury wage level. The hearing officer observed in his discussion of the evidence that the claimant did not present sufficient credible evidence to prove that she had disability after October 1, 2000. We are satisfied that, under our standard of review, the evidence is sufficient to support the challenged finding of fact and conclusion of law.

The "Decision" portion of the Decision and Order is reformed to conform the period of disability to that found in the challenged finding and conclusion, namely, from April 7, 2000, through October 1, 2000. The decision and order, as reformed, is affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge