

APPEAL NO. 010706

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 9, 2001. The hearing officer determined that the respondent's (claimant) "compensable injury extends to and affects the right carpal tunnel syndrome" and that the claimant "had disability from March 1, through September 1, 2000." The appellant (carrier) has not appealed the compensability determination and that has become final by operation of law. Section 410.169. The carrier did submit a timely appeal of the disability determination, arguing that the claimant was terminated for good cause and that the termination was the reason for the claimant's inability to retain employment at his preinjury wage. The claimant has not responded to the appeal.

DECISION

Affirmed.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. When an employee sustains a compensable injury, receives a light-duty release, returns to his employer at light duty, and then is terminated by the employer, we must consider whether his termination was for cause. Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991. If the termination was for cause, the employee must establish his disability after the termination by credible evidence. *Id.*

The claimant returned to work in a light-duty capacity as the injury to his hand healed. He continued working until March 1, 2000, when he was terminated. There was evidence from which the hearing officer could determine that the claimant's inability to work from March 1, 2000, through September 1, 2000, was due to the continuing effects of his compensable injury and that the claimant therefore had disability during that period.

The hearing officer did not make any specific finding as to whether the claimant's termination was for good cause, but, as we stated in Texas Worker's Compensation Commission Appeal No. 002931, decided January 30, 2001:

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.

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.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge