

APPEAL NO. 010874
FILED JUNE 8, 2001

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 February 9, 2001, and April 11, 2001, with the record closing April 11, 2001. The hearing officer determined that the compensable injury of the respondent (claimant) was not a producing cause of his temporal bone fracture and brain injury. The hearing officer also determined that claimant had disability from January 29, 2000, to September 8, 2000. Appellant (carrier) appealed only the disability determination, contending that claimant did not have disability or that he had disability only for some days during that time period. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and remand.

The determination regarding extent of injury has not been appealed and is final. Regarding disability, carrier contends that claimant did not have disability or, in the alternative, that claimant was working during some periods between January 29, 2000, and September 9, 2000.

Claimant testified that he began to lose time from work after his compensable injury on _____, and that he was off work for a few months. Claimant conceded that he worked full duty for "two weeks" in July 2000. There was evidence from a supervisor at employer A that claimant worked there beginning on July 5, 2000, but it was for a longer period than two weeks. Claimant testified that he returned to work full-duty for employer B on September 9, 2000, and did not claim disability after that date. Claimant testified that, after working for the two weeks for employer A and before working for employer B, he worked "one month" for employer C. He also said he worked for three hours one day for employer D. The dates of this employment are not known. There was also no evidence regarding whether claimant was earning his preinjury wage. Claimant's attorney conceded that claimant did not have disability for "one month and one day" of the period between May 2000 and September 9, 2000.

The hearing officer found that claimant had disability for the entire period between January 29, 2000, and September 8, 2000. This period of disability is not supported by the evidence. We are mindful of the fact that claimant had the burden to prove he had disability. The hearing officer believed claimant was unable, because of a compensable injury, to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). However, the evidence does not support a disability determination for at least a two-week period in July and a one-month period sometime before September 9, 2000. Claimant did not contend that during the month he worked for employer C, he did not earn his preinjury wage and, in fact, his attorney conceded that he did not have disability during

that period when he worked for employer C. However, we cannot render the periods that claimant did not have disability because of the lack of specific dates for the one month of employment. We must remand the issue of disability to the hearing officer for reconsideration after a hearing and evidence on the issue of the periods of disability.

We reverse the hearing officer's disability determination and remand this issue to the hearing officer for reconsideration after a hearing on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge