

APPEAL NO. 010929
FILED JUNE 15, 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 April 4, 2001. The hearing officer determined that the _____, compensable right side and hip injury of the respondent/cross-appellant (claimant) did not extend to "the back and prostatitis and scrotal hydroceles." The hearing officer determined that, due to the compensable injury, claimant had disability from October 10, 1999, to August 24, 2000. Claimant appealed only the determination that the injury did not extend to the back. Appellant/cross-respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's determination that the injury did not extend to the back. Carrier appealed the hearing officer's disability determination on sufficiency grounds. Claimant did not respond to carrier's cross-appeal.

DECISION

We affirm in part and reverse and render in part.

Claimant contends the hearing officer erred in determining that his compensable injury did not extend to his back. We have reviewed this complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier contends the hearing officer erred in determining that claimant had disability from October 10, 1999, to August 24, 2000. Carrier asserted that the medical evidence does not support a disability finding regarding the only injury that was compensable: the right side and hip. Carrier also complains that the hearing officer found disability through August 24, 2000, without considering evidence regarding whether claimant could earn his preinjury wage for some periods of time.

In a January 25, 2000, report, Dr. M stated that he prescribed medication for claimant to be applied over "the lumbar area and the right abdominal area in an attempt to reduce muscle spasms, inflammation, and pain." Dr. M also took claimant off work as of January 25, 2000, and the record contains various off-work slips from Dr. M thereafter. Claimant testified that, prior to that time, he had been working. Claimant did not indicate that he had worked for lesser wages or had worked fewer hours. Claimant claimed disability only from January 25, 2000, to the date of the hearing. The hearing officer noted that Dr. S had stated that, as of August 24, 2000, claimant could return to his preinjury employment.

The off-work slips and medical evidence from Dr. M support a determination that claimant had disability due to the compensable injury beginning on January 25, 2000. However, the evidence does not support the entire period of disability found by the hearing officer. Considering claimant's own testimony that he was working; the lack of evidence that he did not receive his preinjury wages between October 10, 1999, and January 25, 2000; and the fact that Dr. M took claimant off work on January 25, 2000, we conclude that the hearing officer erred in determining that claimant had disability from October 10, 1999, through January 24, 2000. This determination is against the great weight and preponderance of the evidence. We render a decision that claimant had disability from January 25, 2000, through August 24, 2000. The determination that claimant had disability from January 25, 2000, through August 24, 2000, is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm that portion of the hearing officer's decision and order that determines that claimant's compensable injury did not extend to the back. We reverse the hearing officer's disability determination, in part, and render a decision that claimant had disability from January 25, 2000, through August 24, 2000.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge