

APPEAL NO. 011079  
FILED JULY 03, 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 (CCH) was held on April 2, 2001. The hearing officer found that the appellant (claimant) had sustained a repetitive trauma injury to his right upper right extremity on \_\_\_\_\_, and had disability for the period from May 4, 2000, through August 31, 2000. After that date, the hearing officer found that the claimant had the physical ability to earn wages equivalent to his pre injury average weekly wage but had not done so because of a choice to pursue his own business.

The claimant has appealed, arguing that as he receives no wage and cannot return to perform the task he was doing at work when he was injured, he has disability. There is no response or cross-appeal from the respondent (carrier).

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in his determination that there was no further disability after August 31, 2000. The decision states the facts of the injury and we incorporate that here. The claimant stated that beginning the first week in September 2000 he operated his own electrical engine business, for which he performed only paperwork. He stated that the heavy engine work was performed by his son, and also by his brother and third persons acting as independent contractors. The claimant contended that he earned no wages; his Schedule C from his Federal Income Tax return showed gross sales of \$12,782.00, and net profit of \$721.00. The claimant testified that business was better in 2001. Asked why he did not seek employment after August 2000, he stated that it was because he was employed by his own business.

Temporary income benefits are due when an injured worker has not reached maximum medical improvement and has disability. Section 408.101(a). Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage." Self-employment may be considered by a hearing officer in assessing whether the compensable injury has been a cause of disability. See Texas Workers' Compensation Commission Appeal No. 94755, decided July 20, 1994. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be

clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge