

APPEAL NO. 011255
FILED JULY 10, 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 March 13, 2001, and May 14, 2001. The hearing officer determined that appellant (claimant) had good cause for the failure to attend the December 18, 2000, required medical examination (RME) appointment and that claimant had disability from August 22, 2000, to January 4, 2001, and from January 30, 2001, to May 14, 2001. Claimant appealed the disability determination on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and render.

Claimant contends the hearing officer erred in determining that he did not have disability from January 5, 2001, through January 29, 2001. An August 22, 2000, off-work slip from Dr. K indicates that claimant is off work as of that date. In a February 7, 2001, report, Dr. P, an RME doctor, stated that claimant is unable to work in any capacity. There is nothing in the record to indicate that claimant was able to obtain or retain his preinjury wage during that period of time between January 5, 2001, and January 29, 2001. We have reviewed the hearing officer's decision and findings and his determination in that regard is not explained.¹ We conclude that the determination that claimant did not have disability from January 5, 2001, through January 29, 2001, is 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).

¹We note that the consequences of failing to attend an RME appointment is suspension of temporary income benefits and not a finding that there is no disability. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.6(h) (Rule 126.6(h)).

We reverse the hearing officer's determination that claimant did not have disability from January 5, 2001, to January 29, 2001. We render a decision that claimant had disability from August 22, 2000, through the date of the hearing.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge