

APPEAL NO. 013214  
FILED FEBRUARY 5, 2002

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 November 29, 2001. With respect to the single issue before her, the hearing officer determined that the respondent (claimant) has disability, as a result of his compensable injury, since \_\_\_\_\_. In its appeal the appellant (carrier) contends that the great weight and preponderance of the evidence suggests that the reason for the claimant's inability to obtain and retain employment at wages equivalent to the preinjury wage was due to his retirement and not as a result of his compensable injury. In his response, the claimant urges affirmance.

DECISION

Affirmed.

The claimant testified that he worked for the employer for over 34 years. It was undisputed that the claimant sustained a compensable injury on \_\_\_\_\_. The claimant testified that he continued to perform his regular job duties but was initially given help from co-workers with tasks such as lifting; that after a time because of company layoffs he had to again perform tasks without assistance; and that his back pain increased. He further testified that he accepted an incentive to retire early and that his last day of work for the employer was in mid December and that he took two weeks vacation. In medical reports dated February 13, 2001, and March 13, 2001, Dr. B stated that the claimant could not return to his regular duties. The claimant testified that if not for his injury, he would have taken the early retirement incentive and looked for work elsewhere. He further testified that he knew of several jobs he could have taken.

The claimant had the burden to prove by a preponderance of the evidence that he had disability. Texas Workers' Compensation Commission Appeal No. 941566, decided January 4, 1995. "Disability" is defined as "the inability 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. We have held in the past that a claimant's voluntary retirement is a factor for the hearing officer to consider, but is not necessarily controlling on the issue of disability. See, e.g., Texas Workers' Compensation Commission Appeal No. 990917, decided June 14, 1999 (Unpublished), and Texas Workers' Compensation Commission Appeal No. 980168, decided March 3, 1998 (Unpublished), and cases cited therein. Nothing in our review of the record reveals that the hearing officer's disability determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse the challenged determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GEORGE MICHAEL JONES  
9330 LBJ FREEWAY, SUITE 1200  
DALLAS, TEXAS 75243.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge