APPEAL NO. 020122
FILED MARCH 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 December 19, 2001. The hearing officer determined that (1) the appellant (claimant) was not entitled to a change in treating doctors from Dr. C to Dr. P; and (2) the claimant had disability from February 21, 2001, through July 26, 2001. The claimant appeals the determinations on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed in part, reversed and remanded in part.

CHANGE IN TREATING DOCTOR

The hearing officer did not err in determining that the claimant was not entitled to a change in treating doctors. Section 408.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(e) (Rule 126.9(e)) sets out the criteria for a change in treating doctors. In view of the evidence presented, the hearing officer could find, as he did, that the claimant sought a change in treating doctors to obtain an off-work slip and did not otherwise meet the criteria referenced above. 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 (Tex. 1986). Additionally, we cannot conclude that the hearing officer's determination is an abuse of discretion.

DISABILITY

The claimant asserts error in the hearing officer's determination that the period of disability ended on July 26, 2001. The claimant contends that she has continuing disability as evidenced, in part, by her light-duty work release from Dr. C on July 26, 2001. Indeed, in Finding of Fact No. 2, the hearing officer found that Dr. C returned the claimant to restricted work status on July 26, 2001. We have said that a restricted release to work as opposed to an unrestricted release is evidence that the effects of the injury remain and disability continues. *See* Texas Workers' Compensation Commission Appeal No. 92432, decided October 5, 1992.

Notwithstanding, the hearing officer explains the appealed determination, in the "Statement of the Evidence" portion of the decision, by stating:

> Note: The Claimant stated that her employer did not have light duty work but this is not plausibly [sic] because the Claimant, further, stated that the employer allowed her to work in a light duty capacity between February 9, 2001, and February 20, 2001. Therefore, due to the claimed injury, Claimant was unable to obtain or retain employment at wages equivalent to claimant's

pre-injury wage beginning on February 21, 2001 and continuing through July 26, 2001.

The hearing officer, in effect, states that the claimant could return to light-duty work for the employer after July 26, 2001, and, therefore, did not have an inability to obtain or retain employment at preinjury wages beyond that date.

Upon review of the record, we find no evidence to support the determination that light-duty work at preinjury wages was available to the claimant through her employer after July 26, 2001. The fact that the employer may have provided some accommodations for the claimant in the past, at a time when she had not yet seen a doctor for her injury or been placed on any specific work restrictions, does not support the inference that the employer would have provided employment at preinjury wages consistent with Dr. C's specific restrictions after July 26, 2001. Absent the availability of light-duty employment within Dr. C's restrictions, we find no basis for the hearing officer's determination that the disability period ended July 26, 2001. Accordingly, the hearing officer's determination that the period of disability ended on July 26, 2001, is reversed and remanded for further consideration.

The decision and order of the hearing officer are affirmed with regard to the change in treating doctors and reversed and remanded with regard to disability.

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 (amended June 17, 2001). *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATE SERVICES COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge