APPEAL NO. 020131
FILED MARCH 7, 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 (CCH) was held on December 4, 2001. The hearing officer held that the employer did not make a bona fide offer of employment as set forth in the applicable rule of the Texas Workers' Compensation Commission. He held that the appellant (claimant) had disability from _____ through August 3, 2001, and then from October 12, 2001, until the date of the CCH.

The claimant has appealed and argues that he had disability after August 3, 2001, through October 11, 2001, because the employer had not made a bona fide offer of employment and the claimant's restrictions were increased on August 7, 2001. There is no response from the respondent (carrier). The finding that the employer did not make a bona fide offer of employment has not been appealed.

DECISION

The hearing officer's decision and order are affirmed.

The claimant injured his back on _____. He was off work for a few weeks, and then released by his treating doctor with a few restrictions on bending and stooping and a 15-pound lifting limit. He was offered a light-duty position, that he accepted, to work as a door greeter. The claimant said he showed up the first day and that there was no one to show him how to read customer receipts so he left. He also said he was under the impression he would have to be on his feet for six straight hours, which he could not do. He then said he did not show up any other day because he was without a car or transportation. He was terminated effective August 3, 2001, for not reporting to work or calling in for over three days.

The store manager testified that only on rare occasions would receipts have to be inspected by a greeter, and then it would take a minute or two for someone to instruct the claimant what to do. He said that while he would have worked with the claimant on transportation problems, he also felt under no obligation to hold the claimant's job open indefinitely if the reason he could not work was due to transportation. After he was terminated, the treating doctor added to his restrictions, specifically a two-hour limit on walking and standing.

When an employee sustains a compensable injury, receives a light-duty release, returns to light duty and then is terminated by the employer, the hearing officer must consider whether his termination was for cause. Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991. If the termination was for cause, the employee must establish his disability after the termination by credible evidence. *Id*. Similarly, we have held that 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), and if the employer has terminated the employee for cause, the employee must establish disability after the termination by credible evidence.

A finding of disability is based on the determination that the inability to earn the preinjury wage was a result of the compensable injury. Section 401.011(16). In this regard, we have noted that termination for cause does not necessarily preclude disability, but may be considered by the hearing officer in determining why a claimant is unable to earn the preinjury wage. Appeal No. 91027, *supra*. Thus, disability can continue after termination if a cause of the inability to earn the preinjury wage after termination was the compensable injury. Texas Workers' Compensation Commission Appeal No. 93850, decided November 8, 1993. We have also held that the 1989 Act does not "impose on an injured employee the requirement to engage in new employment while still suffering some lingering effects of his injury unless such employment is reasonably available and fully compatible with his physical condition and generally within the parameters of his training, experience, and qualifications." On the other hand, we do not believe the 1989 Act is intended to be a shield for an employee to continue receiving temporary income benefits where, taking into account all the effects of his injury, he is capable of employment but chooses not to avail himself of reasonable opportunities. . . ." Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991.

Nothing in our review of the record indicates that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge