

APPEAL NO. 020201
FILED MARCH 20, 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 January 3, 2002. The hearing officer determined that the appellant (claimant) did not have disability from August 30, 2001, through the date of the hearing. The claimant appeals the determination on legal and factual grounds. The respondent (carrier) urges affirmance.

DECISION

Reversed and rendered.

The facts in this case are undisputed. The claimant worked as a cashier in a booth in a parking lot at an airport. On _____, the claimant sustained a compensable injury while walking to turn off the lights in her car. The claimant testified that she injured her left ankle and right leg. She was diagnosed with sprain injuries to her left ankle and right leg and a fracture of the right proximal fibula. The carrier did not dispute the existence of disability prior to August 30, 2001. On August 29, 2001, the claimant was released to work without restrictions. Medical records, dated August 29, 2001, indicate that the claimant was released to return "to work as a cashier in a parking lot near the airport . . . No restrictions from her usual job duties." When the claimant returned to work on August 29, 2001, however, the employer did not have a cashier position available for her. The claimant was put to work driving a shuttle bus and lifting luggage weighing up to 75 pounds. On August 30, 2001, upon learning of the claimant's new job duties, the treating doctor voided the prior work release and restricted the claimant to light duty for the compensable injury through October 16, 2001, with restrictions on standing, kneeling/squatting, and lifting no more than 10 pounds for more than four hours per day. The claimant later changed treating doctors; the claimant's new treating doctor continued her light-duty restrictions through the date of the hearing. The claimant did not work from August 30, 2001, through the date of the hearing.

The hearing officer made the following determinations:

FINDINGS OF FACT

2. Claimant has been released to light duty continuously since August 30, 2001.
3. Claimant could perform her pre-injury job with the restrictions from her doctors.
4. The employer has not made Claimant's preinjury job available to her, and the employer's offered work is not within her restrictions.

5. Claimant has not looked for other work since August 30, 2001.
6. The cause of Claimant's unemployment beginning August 30, 2001, and continuing through the date of this hearing is not the compensable injury, but the employer's refusal to give her old job back.

CONCLUSIONS OF LAW

3. Claimant has not had disability from the compensable injury at any time beginning August 30, 2001, and continuing through the date of this hearing.

The claimant asserts that the hearing officer applied the wrong legal standard in determining whether disability continued from August 30, 2001. We agree.

We have said, “[w]here the medical release is conditional and not a return to full duty status because of the compensable injury, disability, by definition, has not ended unless the employee is able to obtain and retain employment at wages equivalent to his preinjury wages.” Texas Workers’ Compensation Commission Appeal No. 91045, decided November 21, 1991. Evidence to establish an end of disability must show that employment at preinjury wages, meeting the conditions of the medical release, is reasonably available to the employee and the employee has not availed himself of such employment opportunities. Appeal No. 91045. Notwithstanding, an employee released to light-duty work is not required to look for work or show that work was not available. Texas Workers’ Compensation Commission Appeal No. 941092, decided September 28, 1994; Texas Workers’ Compensation Commission Appeal No. 941261, decided November 2, 1994. In view of the above referenced findings of fact, the hearing officer erred as a matter of law in determining that the claimant did not have disability at any time from August 30, 2001, through the date of the hearing.

Additionally, the hearing officer erred in finding that the compensable injury was not a cause of the claimant’s inability to obtain or retain employment at wages equivalent to her preinjury wage, as stated in Finding of Fact No. 6 above. The claimant’s undisputed testimony establishes that following the injury her legs were not strong enough to do the bending and lifting required by the position which she was offered. The claimant’s medical release, dated August 30, 2001, corroborates the claimant’s testimony. Indeed, the hearing officer found that the claimant was released to light duty continuously since August 30, 2001. The hearing officer’s determination that the compensable injury was not a cause of the claimant’s unemployment 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 (Tex. 1986).

For the reasons stated above, we reverse the hearing officer's decision and render a decision that the claimant had disability, consistent with the period set out in Finding of Fact No. 6, beginning August 30, 2001, and continuing through the date of the hearing.

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

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge