

APPEAL NO. 020352
FILED APRIL 3, 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 23, 2002. The hearing officer resolved the disputed issues before her by determining that the appellant (claimant) sustained a compensable repetitive trauma injury on or about _____, and that she had disability beginning August 9, 2001, and ending October 5, 2001. The claimant appealed the hearing officer's determination that disability ended on October 5, 2001. The respondent (carrier) responded, urging affirmance. The determination that the claimant sustained a compensable injury is unappealed and has become final. Section 410.169.

DECISION

Reversed and rendered.

The hearing officer determined that the claimant's disability ended on October 5, 2001, because she was able to return to work in a light-duty capacity as of October 6, 2001. It is undisputed that the employer did not offer the claimant light-duty employment. The Texas Workers' Compensation Commission appointed a required medical examination doctor who determined that the claimant could function at the light-duty capacity level, with restrictions, from August 2, 2001, continuing through the date of his report, which was issued on January 15, 2002.

We have held that a light-duty release does not in and of itself end disability. We have further held that a light-duty or conditional release is evidence that disability continues and a claimant under a light-duty release does not have the obligation to look for work or to show that work was not available. Texas Workers' Compensation Commission Appeal No. 970597, decided May 19, 1997. The employer's human resources director testified that they would not allow the claimant to work light duty until it was determined that she had sustained a compensable injury. There was no evidence that contradicted the testimony of the employer's human resources director or which showed that the employer would have permitted the claimant to return to work under her restrictions. Thus, the evidence established there was no light duty available to the claimant from the employer until the hearing officer issued a decision finding that her injury was compensable.

The hearing officer's determination that the claimant's disability ended when she was released to light-duty work is contrary to the law and the evidence presented in this case. In reversing under similar facts in Texas Workers' Compensation Commission Appeal No. 020201, decided March 20, 2002, we stated as follows:

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.

Therefore, we reverse the hearing officer’s determination that disability ended on October 5, 2001, and render a decision that the claimant’s disability continued through the date of the hearing.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Edward Vilano
Appeals Judge