

APPEAL NO. 021818
FILED AUGUST 26, 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 June 19, 2002. The hearing officer determined that the appellant (claimant) did not have disability from January 6 to November 15, 2001, and that she did have disability from November 16, 2001, to March 14, 2002.

The claimant appealed, contending that she had disability from January 6 to November 15, 2001. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant, a housekeeper at the employer's hospital, sustained a compensable lumbar spine injury on _____. The employer sent the claimant to Dr. R for treatment. The claimant was returned to work at modified duty and the employer accommodated the claimant's restrictions. The claimant subsequently was referred to Dr. P by Dr. R and began treating with Dr. P. There was admittedly some confusion who the treating doctor was and the claimant received advice that she could treat with both doctors. On January 3, 2001, Dr. R decreased the restrictions (i.e. increased the lifting restrictions from 20 pounds to 30 pounds) while Dr. P increased the restrictions limiting the claimant to work four hours a day on December 28, 2000. Dr. P's report with this restriction was not made available to the employer until about January 8, 2001. Meanwhile, the claimant resigned or retired on January 5, 2001. The claimant's condition subsequently grew progressively worse and the claimant had spinal surgery on November 16, 2001, and the carrier began paying temporary income benefits at that time. Disability after November 16, 2001, is not at issue.

A key point is whether the claimant's resignation/retirement was due to her inability to physically perform her duties under Dr. R's new restrictions or whether she voluntarily resigned. The hearing officer commented that the claimant's "testimony that she resigned because she was unable to perform her duties was not persuasive" and found.

FINDING OF FACT

2. Claimant voluntarily resigned from her employment on January 5, 2001 was due to personal reasons and not because of the injury sustained on _____.

The claimant had the burden to prove by preponderance of the evidence that she had disability. Texas Workers' Compensation Commission Appeal No. 012361, decided November 19, 2001. Disability is defined as "the inability because of a compensable injury 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. Whether the claimant's resignation was due to her physical inability to perform her duties or was for personal reasons of retirement were factual determinations for the hearing officer to resolve. Although another fact finder may well have drawn different inferences from the evidence concerning disability, which would have supported a different result, that does not provide a basis for us to reverse the disability determination on appeal. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

After review of the record before us and the complained-of determination, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. 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 **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, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Roy L. Warren
Appeals Judge