

APPEAL NO. 022393
FILED NOVEMBER 8, 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 August 22, 2002. The hearing officer determined that the respondent (claimant) has disability resulting from his _____, compensable injury from February 8, 2002, through the date of the hearing. The appellant (carrier) appealed on sufficiency of the evidence grounds. The file does not contain a response from the claimant.

DECISION

Affirmed.

Disability means 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. The claimant testified that he returned to work in a light-duty capacity and continued working until May 24, 2002, when he was terminated for absenteeism; that he missed work in part due to his compensable injury; that while he was on light duty he worked fewer hours per week than he did prior to his injury; that he has not yet been released to full duty; and that he has not worked since his employment was terminated on May 24, 2002. The hearing officer could credit that testimony and could determine that the claimant's inability to obtain and retain employment at wages equivalent to his preinjury wage from February 8, 2002, through the date of the hearing was due to the continuing effects of his compensable injury, and not his termination. Thus, the hearing officer did not err in determining that the claimant had disability during that period. Our review of the record does not demonstrate that the challenged determination is so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse that determination on appeal. 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 **EMPLOYER'S INSURANCE COMPANY OF WAUSAU** 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judge