

APPEAL NO. 022530
FILED NOVEMBER 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 September 10, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from January 16 through June 16, 2002. The appellant (carrier) appeals the hearing officer's determination on the disability issue. No response was received from the claimant. There is no appeal of the hearing officer's determination that the claimant sustained a compensable injury.

DECISION

The hearing officer's decision on the disability issue is reversed and a decision is rendered that the claimant had disability from January 16 through March 10, 2002.

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The carrier contends that the only reason the claimant was unemployed after his compensable injury was because the employer terminated his employment due to the claimant's refusal to take a drug test. There is, however, evidence from the claimant's testimony and from the reports of the treating doctor and referral doctors that a cause of the claimant's inability to work, at least through March 10, 2002, was the compensable injury he sustained on _____.

As for the period of March 11 through June 16, 2002, we agree with the carrier's contention that the claimant failed to prove disability for that period. First, the claimant contended that he had disability from January 16, 2002, until he returned to work for another employer on March 11, 2002. He did not claim he had disability after he began working again on March 11, 2002. Second, according to the claimant's testimony, the reason he earned less than his preinjury wage from March 11 to June 16, 2002, when he began earning at least his preinjury wage, was because during that period he was working on a commission basis driving a truck, and bad weather prevented him from making all of the hauls that he would otherwise have made. The claimant did not relate his reduced earnings from March 11 to June 16, 2002, to his compensable injury. We conclude that the portion of the hearing officer's disability determination that finds disability for the period of March 11 to June 16, 2002, is not supported by sufficient evidence and is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision on the disability issue is reversed and a decision is rendered that the claimant had disability from January 16 through March 10, 2002.

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

**JOSEPH A. YURKOVICH
1431 GREENWAY DRIVE, SUITE 450
IRVING, TEXAS 75038.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge