

APPEAL NO. 022787
FILED DECEMBER 10, 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 (CCH) was held on September 26, 2002. The hearing officer determined that the appellant (claimant) sustained a compensable ("strain to his left shoulder and back") injury and had disability from February 18 through May 1, 2002 (all dates are 2002 unless otherwise noted). The hearing officer's determination on the compensable injury issue has not been appealed and has become final pursuant to Section 410.169.

The claimant appeals the disability issue contending that the hearing officer's determination that disability ended on "May 2, 2002," (the hearing officer found the ending date to be May 1) to be "arbitrary" and unsupported by the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Reversed and Remanded.

In unappealed findings the hearing officer determined that the claimant sustained a compensable left shoulder and back strain trying to lift a "dock plate" on _____. The claimant saw his treating doctor, a chiropractor, on February 18. The treating doctor, on a Texas Workers' Compensation Commission (Commission) Work Status Report (TWCC-73) took the claimant off work from February 18 through March 4. Subsequent TWCC-73s kept the claimant off work through July 22, when the treating doctor released the claimant to light duty with restrictions. The employer's doctor saw the claimant on February 19 and on a TWCC-73 released the claimant to light duty with restrictions with an expectation that the restrictions "are expected to last through 03/05/02." The claimant's employment was terminated on March 15 for failure to call in. Ultrasound tests and an MRI of the thoracic spine on June 20 were normal.

Disability is defined as the inability because of a compensable injury to obtain and retain employment at the preinjury wage. The claimant contends that he had disability from February 18 through the date of the CCH (September 26). The hearing officer, in her Statement of the Evidence comments:

However, I cannot accept that the Claimant had disability for the entire period claimed. A strain/sprain should resolve on or before the passage of ten (10) weeks. I believe that the Claimant was capable of returning to work, at least by May 1, 2002, and at the very latest, on June 20, 2002, when the normal MRI was taken. I do not find the records of the chiropractor particularly believable; the language of the records of the chiropractic visits is repetitive.

While we agree that the hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and as such the hearing officer may disbelieve the treating doctor's TWCC-73, the hearing officer's decision must be based on some evidence. In this case there was no evidence to support a May 1 ending date of disability and the hearing officer's discussion makes clear that her determination on this issue is based on her personal belief rather than any evidence in the record. There was no evidence that a strain/sprain should resolve in 10 weeks in this case. There may have been evidence to that effect in other cases but that does not constitute evidence in this case and particularly there is no evidence of a May 1 ending date of disability.

Accordingly, we reverse the hearing officer's decision that disability ended on May 1 as not being supported by any evidence and we remand the case for the hearing officer to find an ending date of disability that is supported by the evidence.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Veronica Lopez
Appeals Judge