

APPEAL NO. 022908  
FILED JANUARY 8, 2003

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 October 16, 2002. The hearing officer determined that (1) the respondent (carrier) did not make a bona fide offer of employment (BFOE); and (2) the appellant (claimant) did not have disability. The claimant appeals the disability determination, asserting legal error. The carrier urges affirmance. The hearing officer's BFOE determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Reversed and rendered.

The claimant worked as a painter's helper. He testified that his job required him to paint, climb scaffold, carry cans of paint, and clean his equipment. It is undisputed that the claimant sustained a compensable injury to his right hand, on \_\_\_\_\_. The employer's safety and environmental director testified that he took the claimant to the medical center on the date of injury, where he was treated for a right dorsal hand contusion and released to full duty. However, due to persistent pain, the claimant did not return to full-duty work but "sat in the office doing nothing." The claimant later sought further medical attention and was diagnosed with a compression fracture of the right hand. The claimant was treated with a splint and sling and prescribed medication for his pain. Medical records, dated May 26, 2002, indicate that the claimant was restricted from using the right hand and instructed to keep the hand elevated. On May 30, 2002, the employer made a written offer of light-duty employment to the claimant at the preinjury wage. The job involved wiping down shop tools and performing other housekeeping duties, using only the left arm. The claimant testified that he initially accepted the light duty offer of employment but later realized that he would be unable to physically perform the required tasks with one hand and keep the other hand elevated. The claimant explained that the shop tools that he would be required to clean were heavy, weighing between 20 and 30 pounds apiece. The employer's safety director testified that the required duties could be performed with only the use of one hand and that other employees had performed these tasks in that manner. The claimant's hand eventually healed and the claimant considered himself capable of returning to full-duty work on July 24, 2002. The hearing officer determined that the claimant did not have disability, given the availability of light-duty employment consistent with the claimant's restrictions at the preinjury wage, albeit not a BFOE.

The hearing officer erred in determining that the claimant did not have disability. We have held that where a 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 the preinjury wage. Texas Workers' Compensation Commission Appeal No. 91045,

decided November 21, 1991. Notwithstanding, we have also held that a claimant under a light-duty release does not have an obligation to look for work or show that work was not available within his restrictions. See Texas Workers' Compensation Commission Appeal No. 970597, decided May 19, 1997, and cases cited therein. Although the hearing officer believed that the claimant was capable of performing only light-duty work, her decision effectively requires the claimant to show that no work was available within his work restrictions. This was error. Accordingly, we reverse the hearing officer's disability determination. In view of the undisputed evidence above, we render a decision that the claimant had disability from May 26 to July 24, 2002.

The decision and order of the hearing officer are reversed and a new decision rendered that the claimant had disability from May 26 to July 24, 2002.

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 SYSTEM  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Terri K. Oliver  
Appeals Judge