

APPEAL NO. 030062  
FILED FEBRUARY 18, 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 December 19, 2002. The hearing officer determined that the appellant (claimant) sustained a compensable cervical spine injury on \_\_\_\_\_, and had disability from November 7 to December 11, 2002. The hearing officer's decision on the compensable injury has not been appealed and therefore has become final pursuant to Section 410.169.

The claimant appeals the disability determination, contending that because he was only released to "light duty," there is no or insufficient evidence that his disability ended on December 11, 2002, and "there has been no showing of an ability to **retain** employment." (Emphasis in original.) The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a part-time telemarketer earning \$6.00 an hour at the time of his injury. In unappealed findings it was determined that the claimant sustained a compensable cervical injury in a slip and fall on \_\_\_\_\_. The claimant continued to work until July 16, 2002, when he resigned to take a better paying full-time job (\$54,000 a year) with a subsequent employer. The claimant continued in that job until his employment was terminated on November 6, 2002. The claimant then had cervical surgery for his compensable injury on November 21, 2002, and was released to return to work by his treating doctor on December 11, 2002. The claimant testified that he was released to "light duty" but light duty was never defined. The treating doctor's progress note of December 11, 2002, indicates that the doctor was satisfied with the claimant's progress and that the claimant only "has some mild discomfort if he sits for a long time at his computer." The claimant testified that he has been actively seeking employment in his "chosen job path" (a human resources specialist). The claimant asserts that because his release to return to work was only a light-duty release, his disability continues until he is able to obtain a job in his chosen career field.

Disability is defined in Section 401.011(16) as the inability because of the compensable injury to obtain and retain employment at the preinjury wage. While it is true that a release to light duty is evidence that disability continues, in this case the hearing officer obviously believed that the claimant's release, limited only by sitting "for a long time" at a computer, does not preclude the claimant's ability, because of the compensable injury, to obtain and retain employment at his preinjury wage of \$6.00 an hour. Because the claimant has been unable to obtain employment in his chosen

career field as a human resources specialist does not mean that the claimant has a continued inability to obtain and retain employment at the preinjury wage.

After review of the record before us and the complained-of determinations, 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 **TRUCK INSURANCE EXCHANGE** and the name and address of its registered agent for service of process is

**FRED WERKENTHIN  
LAW OFFICES OF JACKSON & WALKER, L.L.P.  
100 CONGRESS AVENUE, SUITE 1100  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Terri Kay Oliver  
Appeals Judge

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Robert W. Potts  
Appeals Judge