

APPEAL NO. 030086
FILED FEBRUARY 24, 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 (CCH) was held on December 3, 2002. The hearing officer determined that the appellant (claimant) sustained a compensable injury on _____, and that he did not have disability as a result of his compensable injury. The claimant appealed the hearing officer's disability determination on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance. The hearing officer's determination that the claimant sustained a compensable injury on _____, is unappealed and has become final. Section 410.169.

DECISION

Reversed and remanded.

The hearing officer determined that the claimant sustained a compensable injury to his low back on _____. The claimant testified that the injury occurred while he was lifting a 100-pound bag of blasting material to load into a sandblaster when he felt something give way in his back. It is undisputed that the claimant was taken to a minor emergency clinic by his employer that same day, and that he was released to return to work with restrictions. The claimant was diagnosed with a back sprain, and his restrictions included no kneeling/squatting; bending/stooping; pushing/pulling; twisting; and no lifting over 10 pounds. It is also undisputed that the claimant returned to work, and the employer accommodated his restrictions, until he was terminated on September 3, 2002. The claimant testified that he has not been released to work without restrictions, stating that he has been told that he first needs to undergo physical therapy.

In the Statement of the Evidence portion of the decision, the hearing officer wrote:

The records show that [c]laimant was terminated for cause on [September 3, 2002]. Further, the records show that [c]laimant was capable of engaging in other employment activities after his date of injury. He has not shown that he was unable to obtain or retain employment due to his injury. Therefore, [c]laimant has no resulting disability.

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).

We note that under the facts before us, whether or not the claimant was terminated for cause is not dispositive of the disability issue. The fact that a claimant is released for light duty is evidence that the effects of the injury continue and disability

exists; even a claimant terminated for cause may establish disability thereafter. Texas Workers' Compensation Commission Appeal No. 013103, decided February 1, 2002. A claimant need not prove that the compensable injury was the sole cause, as opposed to a cause, of the disability. Texas Workers' Compensation Appeal No. 022689, decided November 25, 2002. The 1989 Act does not impose on an injured employee the requirement to seek employment while still suffering from the lingering effects of his injury unless such employment is readily available and fully compatible with his physical condition and generally within the parameters of his training, experience, and qualifications. Texas Workers' Compensation Commission Appeal No. 020131, decided March 7, 2002. We direct attention to Texas Workers' Compensation Commission Appeal No. 980003, decided February 11, 1998, for an informative discussion of the case law pertaining to a determination of disability after termination from employment. All of the medical reports submitted into evidence indicate that the claimant was released to light-duty work with restrictions from the date of the injury. There is no evidence that the claimant had been released to return to work without restrictions as of the date of the CCH.

The hearing officer gave no indication of what evidence she relied upon in reaching her decision regarding disability. As such, we reverse the hearing officer's determination that the claimant did not have disability and remand the case back to the hearing officer. On remand, the hearing officer is directed to make specific findings or explain the rationale why the claimant, who was on light duty with restrictions, did not have disability after his employment was terminated. The hearing officer should rely upon the record as it existed at the time the hearing was concluded. No additional evidence is to be admitted or considered.

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 Texas Workers' Compensation 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 **NORTHERN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Daniel R. Barry
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge