

APPEAL NO. 030408
FILED APRIL 9, 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 16, 2002, with the record closing on January 16, 2003. On the sole issue, the hearing officer determined that the respondent (claimant) had disability resulting from the compensable injury of _____, beginning May 28, 2002, and continuing through the date of the hearing. The appellant (carrier) appeals this determination on legal and sufficiency of the evidence grounds. The claimant did not file a response.

DECISION

Affirmed.

The claimant was a construction worker, working with prefabricated concrete walls. On _____, the claimant was taking down a concrete panel, twisted, and injured his low back. It is undisputed that the claimant sustained a compensable injury to his low back and was restricted to light-duty work. The claimant returned to light-duty employment at his regular pay until May 28, 2002, when he was terminated for a positive drug screen.

The carrier contended at the hearing and on appeal that the claimant's termination was the sole cause of the claimant's unemployment from May 28, 2002, through the date of the hearing. The carrier further argues that in order to establish that the compensable injury was a cause of the claimant's unemployment beginning May 28, 2002, the claimant must show a worsening of his work ability, such as would prevent him from returning to his light-duty employment. The carrier cites, in support of its position, Texas Workers' Compensation Commission Appeal No. 000529, decided April 26, 2000.

In Appeal No. 000529, the parties stipulated that the claimant worked light duty earning full wages from August 17 to September 28, 1999; the claimant was laid off on September 29, 1999, due to his status as an undocumented alien; the claimant earned no wages and was physically unable to perform the job he was doing at the time of his injury, from September 29, 2002, through the date of the hearing; and the claimant's light-duty work restrictions remained unchanged through the date of the hearing. Notwithstanding, medical evidence showed that the claimant was taken off work by his treating doctor on October 27, 1999. The hearing officer determined that the claimant's termination was the "only cause" of his not working from September 29 to October 26, 1999, but that the claimant had established disability from October 27, 1999, through the date of the hearing, given the treating doctor's off-work slip. The carrier, in that case, appealed, arguing that the hearing officer's disability determination was in direct conflict with the stipulation that the claimant's light-duty restrictions continued through the date of the hearing. The Appeals Panel agreed and reversed the hearing officer's

disability determination for the period beginning October 27, 1999, and rendered a decision that the claimant did not have disability for that period, in harmony with the hearing officer's determination that the claimant's termination was the "only cause" of the claimant's unemployment. To be clear, the Appeals Panel did not hold that a claimant, under these circumstances, must show a worsening of his work ability, such as would prevent him from returning to his light-duty employment, in order to establish disability.

Indeed, we have noted that a restricted release to work, as opposed to an unrestricted release, is evidence that the effects of the injury remain, and disability continues. Texas Workers' Compensation Commission Appeal No. 92432, decided October 2, 1992. Additionally, a compensable injury need only be a cause of the claimant's inability to obtain or retain employment. Texas Workers' Compensation Commission Appeal No. 990655, decided May 13, 1999. A claimant's termination for cause does not, in itself, foreclose the existence of disability. Appeal No. 990655. 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.

Whether the claimant was unable to obtain and retain employment at his preinjury wage was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

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

Terri Kay Oliver
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge