

APPEAL NO. 031034  
FILED JUNE 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 (CCH) was held on April 3, 2003. The hearing officer decided that the appellant/cross-respondent (claimant herein) sustained a repetitive trauma injury; that the date of injury was \_\_\_\_\_; that the claimant timely notified her employer of the claimed injury; and that the claimant had disability beginning on \_\_\_\_\_, and continuing through September 3, 2002. The respondent/cross-appellant (carrier herein) files a request for review challenging the hearing officer's resolution of the injury, date of injury, timely report of injury, and disability determinations. The carrier argues that the claimant did not prove that she sustained a compensable injury; that the date of any compensable injury she did sustain would have been either (alleged date of injury), or in the alternative (alternative date of injury); that given an earlier date of injury, the claimant did not timely report her injury to her employer; and that absent an injury, the claimant did not have disability. There is no response from the claimant to the carrier's request for review in the appeal file. The claimant files a request for review arguing that the evidence showed that she had disability continuing through the date of the CCH. The carrier responds that the evidence did not support a finding of disability after September 3, 2002.

DECISION

Affirmed in part; reversed and remanded in part.

The hearing officer did not err in his determinations on the issues of occupational disease injury, date of injury, and timely notice of injury. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 409.001(a) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Conflicting evidence was presented on the issues of occupational disease injury, date of injury, and timely report of injury to the employer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's determinations on the issues of occupational disease injury, date of injury, and timely notice to the employer are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W. 2d 175 (Tex. 1986).

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. However, in the present case, the hearing officer ended disability based upon a release to return the claimant to work with restrictions. These restrictions included "no gripping, lifting, repetitive work with hand until further notice." We note that the claimant's injury was a right wrist and hand injury which she contended resulted from using a 10 key computer pad when she was working as a company controller doing extensive accounting work.

Disability means the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury. Section 401.011(16). We have said that a light-duty or conditional work release is evidence that disability continues. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. We have also held that a claimant under a light-duty work release does not have an obligation to look for work or show that work was not available within his or her restrictions. See Texas Workers' Compensation Commission Appeal No. 970597, decided May 19, 1997, and cases cited therein. The hearing officer found that the claimant did not have disability after September 3, 2002, based upon a restricted-duty work release. In view of the applicable law, we conclude that the hearing officer erred in determining that the claimant did not have disability after September 3, 2002, because that determination effectively requires the claimant, in this case, to show that no work was available within her work restrictions. We therefore reverse the decision of the hearing officer as to the issue of disability and remand the case to him to determine the period of the claimant's disability based upon the evidence in the case, applying the correct legal standards.

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.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Edward Vilano  
Appeals Judge