

APPEAL NO. 031915  
FILED AUGUST 29, 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 June 12, 2003. The hearing officer determined that: (1) the appellant (claimant) sustained a compensable injury on \_\_\_\_\_; and (2) the claimant had disability from November 16, 2002, through March 3, 2003. The claimant appeals the disability determination on sufficiency of the evidence grounds, asserting that disability began on June 24, 2002. The respondent (carrier) filed a brief, stating as its position that the claimant did not sustain a compensable injury and did not have disability. The carrier's brief was not timely filed as an appeal and, therefore, will not be considered as such. In the absence of a timely appeal of the hearing officer's injury determination, such determination has become final. Section 410.169.

DECISION

Reversed and remanded.

The claimant attached additional evidence to her appeal which would purportedly show that she had disability beginning June 24, 2002. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence does not meet the requirements for newly discovered evidence because it was not shown that the documents could not have been obtained prior to the hearing below. Accordingly, such documents will not be considered for the first time on appeal.

The claimant sustained a compensable injury, which included her low back, on \_\_\_\_\_. The claimant testified that she began losing time from work on June 24, 2002, due to her compensable low back injury. She testified that she missed approximately three to four weeks in June and July 2002. She returned to limited hours, approximately 4 to 6 hours per day, in July and August 2002. The claimant testified that she worked intermittently, approximately 30 to 40 hours per week, from August to November 15, 2002. The claimant attempted to return to full-time work in September 2002. She testified that she could do her job but had difficulty sitting all day due to her injury. She testified that her doctor limited her to work "as tolerated." On November 15, 2002, the claimant's position was eliminated and she was laid off. The claimant testified that she has not returned to work since that time. She testified that her treating doctor took her off work on January 29, 2003, and again on March 3, 2003. The medical records show that the claimant was taken off-work on March 3, 2003, for an indefinite period. The claimant testified that she was released to return to work sometime in March 2003, and has been looking for work since that time. During the period that the

claimant continued working for her employer, from June 24, 2003, through November 15, 2003, the claimant earned less than her preinjury wage due to reduced hours.

The hearing officer erred in determining that the claimant did not have disability prior to November 16, 2002. 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. The hearing officer's determination that the claimant had disability beginning November 16, 2002, clearly implies that she believed that the claimant was restricted from full-time work at that time. In the absence of evidence that the claimant's work restrictions began on November 16, 2002, we 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). Accordingly, we reverse the hearing officer's disability determination, with regard to the date disability began, and remand for further consideration of the evidence previously admitted.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge