APPEAL NO. 031925
FILED SEPTEMBER 10, 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 the compensable injury of appellant (claimant) extends to reflex sympathetic dystrophy (RSD) and that claimant had disability from November 25, 2000, through February 27, 2002, with the exception of a period of nondisability from May 18 to June 4, 2001. Claimant only appealed the determination that he did not have disability after February 27, 2002. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order. The determination regarding extent of injury was not appealed and has become final.

DECISION

We reverse and remand.

Claimant appeals and contends that the hearing officer forgot to address whether he had disability after February 27, 2002. Carrier's argument at the hearing was that the off-work slips were for RSD and, since claimant did not have RSD, he did not have disability. The hearing officer stated that she reviewed the evidence and looked at the videotape several times, and that she believed claimant had RSD. The hearing officer did not say that she did not believe that claimant had any restrictions regarding his left hand or that he could return to work with full use of his left hand.

There is a Work Status Report (TWCC-73) taking claimant off work for RSD through June 1, 2002. An August 14, 2002, "statement of treatment" slip from a hospital states that claimant was seen for RSD and referred to psychiatry and that it is "undetermined" when he can return to work. A November 21, 2002, statement of treatment slip from the same hospital states that claimant was followed for RSD which has left him "totally disabled." A December 9, 2002, note from Dr. H states that claimant's left upper extremity is red, discolored and swollen, that the prognosis for RSD is poor, and that he would expect claimant to remain permanently disabled because of this medical condition.

We must remand this case for findings of fact regarding disability. On remand, the hearing officer should make a fact finding regarding whether claimant has any continuing restrictions regarding his left upper extremity. The hearing officer should also make a fact finding regarding whether claimant is able to obtain and retain employment at wages equivalent to the preinjury wage he earned as a machinist before the crush injury to his hand. If the hearing officer found that the sole cause of the inability to earn the wages was something else, there should be a finding of fact in this regard.

On appeal, carrier contended that the hearing officer probably found claimant didn't have disability after February 27, 2002, because he was traveling in Mexico. Claimant said he went to Mexico one time because his father died and one time because his mother died. He said he stayed there about six or seven months during the timeframe in question but also said he stayed there only a matter of weeks. Claimant was unsure in his testimony at times. The fact that claimant was traveling in Mexico would not necessarily end disability. Claimant's ability to earn his preinjury wage and restrictions must also be considered. If claimant was restricted from work due to RSD, it would not matter where he was during the period of restriction. If the hearing officer imposed a job search requirement on the claimant during the period after February 27, 2002, a finding of fact should be made in this regard as well as the findings regarding any restrictions and whether claimant could have earned his preinjury wage.

We have reviewed the complained-of determination that claimant did not have disability after February 27, 2002, and must remand for further findings of fact. In summary, on remand the hearing officer should:

(1) make a fact finding regarding whether claimant has any continuing restrictions regarding his left upper extremity;

(2) make a fact finding regarding whether claimant is able to obtain and retain employment at wages equivalent to the preinjury wage he earned as a machinist before the crush injury to his hand;

(3) If the hearing officer finds that the sole cause of the inability to earn the wages was something else, there should be a finding of fact in this regard and an explanation of evidence to support the finding;

(4) If the hearing officer imposed a job search requirement on the claimant during the period after February 27, 2002, a finding of fact should be made in this regard as well as the findings regarding any restrictions and whether claimant could have earned his preinjury wage.

We reverse only that part of the hearing officer's decision and order that claimant did not have disability after February 27, 2002. We remand for further proceedings consistent with this decision. 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 **SIERRA INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

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

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Chris Cowan
Appeals Judge

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Robert W. Potts
Appeals Judge