

APPEAL NO. 032204  
FILED OCTOBER 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 031034, decided June 18, 2003. We had remanded the case for the hearing officer to apply the proper legal standard in resolving the issue of disability. A hearing on remand was held on July 28, 2003. On remand the hearing officer resolved the issues before him by determining that the respondent (claimant herein) had disability beginning August 13, 2002, and continuing through the date of the contested case hearing. The appellant (carrier herein) files a request for review and the claimant files a response.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

On appeal the carrier reurges its contentions that the hearing officer erred in his resolution of injury, date of injury, timely report of injury, and disability determinations in his original decision prior to remand. We affirmed these determinations in our original decision in Appeal No. 031034, *supra*, and reaffirm them in our decision today for the reasons set out in our prior decision.

The carrier also contends that the hearing officer erred on remand in the present case in finding the claimant had disability beginning on August 13, 2002, and continuing through the date of the contested case hearing. Disability is a question of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we perceive no error.

While the carrier implies the Appeals Panel somehow invaded the fact finding function of the hearing officer by remanding this case on the issue of disability, we find no merit in this assertion. We remanded because the hearing officer erred in applying an incorrect legal standard by finding that a restricted work release ended disability. We did not invade the fact finding function of the hearing officer, but merely required that the hearing officer adhere to established legal standards in finding facts. Requiring adherence to legal standards is the function of the Appeals Panel.

The decision and order of the hearing officer are affirmed.

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