

APPEAL NO. 032767  
FILED DECEMBER 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 (CCH) was held on September 23, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) had disability beginning June 11, 2003, through the date of the CCH. The appellant (carrier) appealed, essentially arguing that the hearing officer's determination is against the great weight and preponderance of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that he had disability. A finding of disability is based on the determination that the inability to earn the preinjury wage was a result of the compensable injury. Section 401.011(16). The carrier argues that the hearing officer did not consider the basis for the claimant's termination, or whether it is the termination or the injury that causes the inability to obtain or retain preinjury wages. In Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991, we have held that termination for cause does not necessarily preclude disability, but may be considered by the hearing officer in determining why a claimant is unable to earn the preinjury wage. Thus, disability can continue after termination if a cause of the inability to earn the preinjury wage after termination was the compensable injury. Texas Workers' Compensation Commission Appeal No. 93850, decided November 8, 1993.

The record reflects that the claimant sustained a compensable low back injury on \_\_\_\_\_, that he was released to light duty on April 3, 2003, and that he was terminated for cause from his employment on May 29, 2003. The claimant testified, and the employer's representative corroborated, that he was paid for eight hours per day although he actually worked only four hours per day. The hearing officer commented that the claimant was able to obtain and maintain employment at his preinjury wage through the artificial inflation of his wages by his employer, and that "once that artificial support was dropped for whatever reason, the reality of [the] Claimant's predicament was that he could no longer obtain and maintain employment at the pre-injury wage as a result of the compensable injury."

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. The hearing officer was persuaded that the claimant sustained his burden of proving that his compensable injury was a cause of his inability to obtain and retain employment at his preinjury wage despite the fact that his employment was terminated. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the

great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the disability determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order 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.**

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge