

APPEAL NO. 041104
FILED JULY 2, 2004

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 April 16, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) sustained a compensable injury on _____, and had disability from July 31, 2003, through March 14, 2004. The claimant appeals the disability determination, arguing that disability extended beyond March 14, 2004. The respondent (carrier) urges affirmance of the hearing officer's decision. The compensability determination has not been appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The evidence reflects that the claimant's treating doctor placed the claimant on restricted duty status as of July 31, 2003. The claimant resigned from her position on August 13, 2003, and thereafter the contract between the claimant's employer, (TI) and (BP) was terminated. On March 15, 2004, the claimant began a new job, earning a lower wage than she had at TI. The hearing officer was persuaded that as a result of the compensable injury, the claimant "was unable to perform all the activities required of her to continue working at [BP] and had disability." The hearing officer found that the claimant's disability began on July 31, 2003, and ended on March 15, 2004, and in doing so, gave the following explanation:

Claimant returned to work at a new[,] full-time job on March 15, 2004[,] at lower wages and with no reasonable expectation of returning to work for employer with an assignment at [BP]. When she returned to new[,] full-time work on March 15, 2004, Claimant began a new career that ended her disability.

Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The hearing officer based the ending date of disability exclusively on the fact that the claimant began a new job on March 15, 2004. However, the hearing officer also noted that the claimant's new employment paid a lower wage than the wage she received at BP. Because the hearing officer was persuaded that due to the compensable injury, the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage through March 14, 2004, the mere fact that she secured new employment at a lower wage on March 15 was not a basis for ending disability. For this reason, the hearing officer's decision that the claimant's disability ended on March 14, 2004, is reversed and a new decision rendered that the claimant had disability from July 31, 2003, through the date of the hearing.

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 RAY OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge