

APPEAL NO. 041640
FILED AUGUST 26, 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 June 2, 2004. The hearing officer determined that the respondent's (claimant) compensable chest injury does not extend to or include an injury to the low back and that the claimant "did have disability from November 11, 2003, and continuing through March 8, 2004." The hearing officer's determination on the extent-of-injury issue has not been appealed and has become final pursuant to Section 410.169.

The appellant (carrier) appeals the disability issue pointing to inconsistent and contradictory findings of the hearing officer. The file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The parties stipulated that on _____, the claimant sustained a compensable injury to his chest. As previously noted the compensable injury does not include a low back injury. Disability is defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

The hearing officer, in Finding of Fact No. 3 found that the claimant was "unable to obtain or retain employment at wages equivalent to the [c]laimant's preinjury wage" from November 11, 2003, and continuing through March 8, 2004. Unfortunately the hearing officer did not make a finding whether the inability to obtain (and) or retain employment was due to the compensable injury or whether it was due to the noncompensable back injury. Conclusion of Law No. 4 states that the "Claimant did not have disability from November 11, 2003, and continuing through March 8, 2004," while the decision portion states that the "Claimant did have disability from November 11, 2003, and continuing through March 8, 2004."

The evidence indicates that the claimant went to the hospital emergency room on _____, for his chest injury and that he was taken off work one day and placed on "light duty X 7 days." The testimony and other evidence was that the employer made an offer of light duty (which was not a bona fide offer of employment pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6)) but that the claimant refused that offer on the basis that he would be unable to perform any work.

Because of the seemingly contradictory findings we look to the hearing officer's Background Information to understand what the hearing officer intended. The hearing officer commented:

The Claimant advised the Employer after the alleged date of injury that he was unable to work in any capacity, and [(Dr. W)] took the Claimant off work on December 17, 2003 based on a lumbar sprain/strain and left adductor magnus (chest) strain. However, by March 9, 2004, the only basis for the Claimant being off work was lumbar spine disc desiccation, which is a disease of life and obviously unrelated to the Claimant's work . .

From that statement we conclude that the hearing officer intended to find disability based, at least in part, on the compensable chest injury and the claimant's testimony that he was unable to perform even light duty. We further note that a claimant's testimony alone may establish disability. (Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989)). We also note that the hearing officer ended disability when the claimant's "being off work" was due only to the lumbar spine.

Consequently, we affirm the hearing officer's decision that the claimant had disability as defined in Section 401.011(16) from November 11, 2003, and continuing through March 8, 2004, as being supported by the evidence and reform Conclusion of Law No. 4 to omit the word "not."

We conclude that the hearing officer's determinations are not 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).

We affirm the hearing officer's decision and order as reformed.

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 SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge