

APPEAL NO. 042860  
FILED DECEMBER 30, 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 (CCH) was held on October 13, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) had disability resulting from the injury sustained on \_\_\_\_\_, from March 16 through September 1, 2004. The claimant appealed, arguing that the hearing officer erred by failing to include findings regarding disability for the time period January 29 through August 3, 2003. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed in part and remanded for additional findings.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The sole issue before the hearing officer was whether the claimant had disability resulting from the injury sustained on \_\_\_\_\_, and if so, for what periods. The hearing officer summarized the respective positions of the parties in her Background Information. The evidence reflected that the claimant was incarcerated from August 3, 2003, until March 8, 2004. In Texas Workers' Compensation Commission Appeal No. 002599, decided December 13, 2000, we noted that disability is an economic concept and that if an injured employee is incarcerated, the actual loss of wages is attributable to such incarceration rather than the compensable injury. Texas Workers' Compensation Commission Appeal No. 92428, decided October 2, 1992; Texas Workers' Compensation Commission Appeal No. 92674, decided January 29, 1993. The claimant does not contend that the hearing officer should find disability for the time period he was incarcerated. However, the claimant contends in his appeal that he was "ordered to be off-work by his treating doctor from January 29, 2003, until the time of his incarceration on August 3, 2003." The claimant additionally represents in his appeal that temporary income benefits (TIBs) were properly paid during that time period and the claimant's entitlement to them was not disputed by the carrier. The claimant states that the carrier has now taken the position that the claimant is only due benefits from March 16 through September 1, 2004, and has taken credit for TIBs which were paid during the claimant's "first period of 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 found that the claimant had disability from March 16 through September 1, 2004. The question of disability presented a question of fact for the hearing officer to resolve. The hearing officer, as the finder of fact is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established.

This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence and finding a limited period of disability. Nothing in our review of the record reveals that the determination that the claimant had disability from March 16 through September 1, 2004, is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb that determination on appeal.

As noted by the hearing officer, the claimant's attorney argued at the CCH that the evidence would prove disability existed from March 16 through September 1, 2004. However, the stated disability issue was not limited to any time period and there was documentary evidence in the record reflecting that the claimant was taken off work from January 29, 2003, through the date of his incarceration.

We affirm the determination that the claimant had disability resulting from the injury sustained on \_\_\_\_\_, from March 16 through September 1, 2004. However, we remand the case for the hearing officer to reconsider the existing record to determine the dates of disability, if any, which may have occurred after the claimant's injury and before his incarceration.

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 **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** 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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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge