

APPEAL NO. 051572
FILED AUGUST 22, 2005

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 June 16, 2005. The two disputed issues at the CCH were: (1) whether the appellant (claimant) sustained a compensable injury on _____; and (2) whether the claimant has had disability, and if so, for what periods. The hearing officer resolved the disputed issues by deciding that: (1) the claimant sustained a compensable injury on _____; and (2) the claimant had disability beginning March 28, 2005, and continuing. The claimant appeals the hearing officer's disability determination, contending that in addition to the period of disability found by the hearing officer, he also had disability from January 19 through March 1, 2005. The respondent (carrier) requests that we affirm the hearing officer's decision. There is no appeal of the hearing officer's determination that the claimant sustained a compensable injury on _____, and that determination has become final under Section 410.169.

DECISION

Reversed and rendered on the disability issue.

It is undisputed on appeal that the claimant sustained a compensable injury on _____. The claimant injured his back while working on that day. The medical reports reflect that the claimant's initial treating doctor reported that the claimant would be unable to work due to his compensable injury from January 19 through March 1, 2005. The initial treating doctor provided therapy for the claimant's back condition. The claimant changed treating doctors and the second treating doctor reported that the claimant would be unable to work due to his compensable injury from February 15 through March 3, 2005. The second treating doctor also provided therapy for the claimant's compensable injury. The second treating doctor reported that the claimant could return to restricted work duty from March 2 through March 28, 2005. The second treating doctor reported that the claimant could return to restricted work duty working a maximum of five hours per day beginning March 28, 2005. The claimant's testimony reflects that he was off work until he was released to return to work in March by his second treating doctor and that he then worked restricted duty for eight hours a day until the second treating doctor restricted him to five-hour work days.

The claimant asserted at the CCH that he had disability from January 19 through March 1, 2005, and from March 28, 2005, continuing through the date of the CCH. The carrier's position was that the claimant did not sustain a compensable injury, and acknowledged that if the hearing officer were to determine that the claimant did sustain a compensable injury, it had nothing with which to refute disability. There are no medical reports that release the claimant to return to any level of work activity prior to March 2, 2005. The hearing officer determined that the claimant has had disability beginning on March 28, 2005, and continuing. The claimant asserts that the hearing

officer erred in not finding disability from January 19 through March 1, 2005. In its response, the carrier requests that we affirm the hearing officer's decision. The carrier does not appeal the hearing officer's determination of disability from March 28, 2005, and continuing. In his decision, the hearing officer states that after the claimant's injury, the claimant continued to work for the next two weeks. We do not find any evidence to support that statement. The claimant's testimony reflects that he returned to work after his second treating doctor released him to return to restricted duty on March 2, 2005. Although there is some evidence that the claimant was also off work during some period toward the end of March 2005, the claimant does not assert that the hearing officer erred in not finding disability for that period of time.

The claimant had the burden to prove that he had disability, which 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 is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's determination that the claimant's disability began on March 28, 2005, is not supported by any evidence and is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust.

We reverse the hearing officer's determination that the claimant had disability beginning March 28, 2005, and continuing, and we render a new decision that the claimant had disability beginning January 19 and continuing through March 1, 2005, and again from March 28, 2005, and continuing through the date of the CCH.

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

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge