

APPEAL NO. 061390
FILED SEPTEMBER 6, 2006

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 8, 2006. The hearing officer resolved the disputed issue by deciding that appellant/cross-respondent (claimant) did not sustain disability from July 2, 2005, through January 31, 2006, and that the "claimant has sustained disability since February 1, 2006." The claimant appealed, contending that the hearing officer reframed the issue without consent of all the parties and disputing the determination that the claimant did not sustain disability from July 2, 2005, through January 31, 2006. The appeal file does not contain a response from the respondent/cross-appellant (carrier) to the claimant's appeal. However, the carrier filed an appeal disputing the determination that the claimant has sustained disability since February 1, 2006. The carrier contends that the hearing officer's decision was premised on an incorrect review of the evidence. The claimant responded, urging affirmance of the determination that he has sustained disability since February 1, 2006.

DECISION

Reversed and remanded.

It was undisputed that the claimant sustained a compensable injury on _____. The following two issues were identified as unresolved after the benefit review conference (BRC): (1) Did the claimant have disability resulting from the compensable injury and if so, for what period(s)? and (2) What was the amount of the wages the claimant earned each week beginning the first day of each period of disability for adjustment of temporary income benefits? The claimant acknowledges in his appeal that the issues identified in the BRC report were the correct issues. The claimant contends in his appeal that there was never any dispute or discussion about the existing, already paid, and agreed disability between _____, and January 31, 2006. However, a review of the record indicates that the parties agreed that the "real" issue in dispute was disability and that the parties agreed on the amount of claimant's average weekly wage, the number of hours and dates the claimant worked, as well as the amount of money the claimant earned, but did not agree that any reduction in any earnings was due to the compensable injury. No specific stipulations were entered into on the record. We find the claimant's contention that the hearing officer improperly amended the disability issue to be without merit. The record does not reflect that the parties agreed to any specific period of disability. Further, the BRC report regarding disability did not indicate that any periods of disability had been resolved by agreement.

Both parties disputed the hearing officer's determination regarding specific periods of disability. The claimant contends that the determination that she did not have disability during the period of July 2, 2005, through January 31, 2006, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly

unjust. The claimant argues that the evidence establishes that she underwent numerous sessions of physical therapy and treatment as well as undergoing various diagnostic tests, which would have necessitated missing some work. The carrier disputes the hearing officer's determination that the claimant has sustained disability since February 1, 2006, arguing that the period of disability found was premised on an incorrect review of the evidence. The hearing officer noted in her discussion that it appeared since February 1, 2006, the claimant has not been released to return to work without restrictions, and therefore it is logical to conclude that the claimant has sustained disability since that date. However, the carrier correctly notes that the record contains A Work Status Report (DWC-73) dated February 3, 2006, from a referral doctor which releases the claimant to return to work without restrictions as of February 2, 2006. Additionally we note that the hearing officer stated in her discussion that the payroll records reflect that the claimant worked nearly as many days in the six months following her injury as she had in the six months preceding the injury. The hearing officer correctly noted that the payroll records reflect that the number of hours the claimant worked varied both before and after her injury from 3 to more than 12 hours per day. However, we note that a close review of the payroll records for the six month period after the injury reflect that the claimant did not work between July 6 and July 18, 2005, nor did she work from August 19 through September 20, 2005. Because the hearing officer misstated the evidence in her discussion and based her determinations on such misstatements, we reverse the hearing officer's determinations of disability and remand the issue of disability back to the hearing officer to make a determination supported by the evidence. No further hearing on remand is necessary although at the hearing officer's discretion argument on disability may be entertained. We note that a determination of disability should include specific beginning and ending dates.

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 Department of Insurance, Division of Workers' Compensation 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.

The true corporate name of the insurance carrier is **UNITED STATES FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge