

APPEAL NO. 081886
FILED MARCH 5, 2009

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 November 19, 2008, in (City), Texas, with the record closing on December 2, 2008. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from June 12 through September 16, 2008, but not thereafter through the date of the CCH. The claimant appealed, disputing the ending date of disability. The respondent/cross-appellant (carrier) responded to the claimant's appeal and also submitted its own request for review in the same document. The carrier disputes both the compensable injury and disability determinations made by the hearing officer. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed in part and reversed and remanded in part.

COMPENSABLE INJURY

The hearing officer's decision that the claimant sustained a compensable injury on _____, is supported by sufficient evidence and is affirmed.

DISABILITY

That portion of the hearing officer's decision that the claimant had disability from June 12 through September 16, 2008, is supported by sufficient evidence and is affirmed.

The claimant testified that he lacerated the third finger of his left hand on a pipe. An operative report is in evidence which reflects that the claimant had surgery on June 25, 2008, to repair a dorsal sensory branch of the radial digital nerve. The hearing officer based the ending date of disability on a Work Status Report (DWC-73) from the claimant's treating doctor, which released the claimant to work with restrictions on September 16, 2008. The DWC-73 listed restrictions of working only a maximum of four hours per day as well as restrictions of lifting/carrying and grasping/squeezing with the claimant's left hand. The hearing officer noted in the Background Information section of the decision and order that "the [c]laimant stated that he felt ready to return to work on that date." The hearing officer additionally noted that the employer would not accommodate the restrictions, and that the claimant returned to his treating doctor, who took him completely off work and that the claimant then began a work hardening program.

Disability means the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury. Section 401.011(16). The Appeals Panel has held that the fact that a claimant is released for light duty is evidence that the effects of the injury continue and disability exists; even a claimant terminated for cause may establish disability thereafter. Appeals Panel Decision (APD) 032767, decided December 9, 2003. A claimant need not prove that the compensable injury was the sole cause, as opposed to a cause, of the disability. APD 022689, decided November 25, 2002. The 1989 Act does not impose on an injured employee attempting to establish disability the requirement to seek employment while still suffering from the lingering effects of his injury unless such employment is readily available and fully compatible with his physical condition and generally within the parameters of his training, experience, and qualifications. APD 91045, decided November 21, 1991. In APD 941261, decided November 2, 1994, the Appeals Panel held that when seeking to establish disability “an employee under a conditional medical release [does] not have to show that work was not available.” See *also* APD 020352, decided April 3, 2002. There is no evidence that the claimant has been released to work full duty by any doctor.

The hearing officer erred in determining that the claimant did not have disability after September 16, 2008, because that determination is not supported by the evidence, and it is so against the great weight and preponderance of the evidence to be clearly wrong and manifestly unjust. We reverse that portion of the hearing officer’s determination that the claimant did not have disability resulting from an injury sustained on _____, after September 16, 2008, and remand back to the hearing officer for a determination of an ending date of disability supported by the evidence.

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. See APD 060721, decided June 12, 2006.

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

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge