

APPEAL NO. 090112
FILED APRIL 7, 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 December 15, 2008. The hearing officer resolved the disputed issues by deciding that: (1) respondent 1 (claimant) was in the course and scope of employment at the time of the claimed injury on _____; (2) that the claimant sustained a compensable injury on _____; and (3) that the claimant had disability beginning _____, and continuing through the date of the CCH.

The appellant (carrier) appealed, disputing the determinations of course and scope of employment, compensability, and disability. The claimant responded, urging affirmance. However, the claimant in her response requested that the "Appeals Panel honor the [hearing officer's decision] finding [that] the [c]laimant sustained a compensable injury on _____ and that she had disability through December 11, 2008." The appeal file does not contain a response from respondent 2 (subclaimant).

DECISION

Affirmed in part and reversed and rendered in part.

It is undisputed that the claimant worked as a server in a restaurant at the time of the claimed injury. The claimant testified that she worked a double shift beginning at lunchtime on _____. It was undisputed that the claimant clocked out at 12:42 a.m. on _____.

COURSE AND SCOPE OF EMPLOYMENT AND COMPENSABLE INJURY

The hearing officer's determinations that the claimant was in the course and scope of employment at the time of her injury and the claimant sustained a compensable injury on _____, are supported by sufficient evidence and are affirmed.

DISABILITY

The disability issue was amended by agreement of the parties during the CCH to specify a time period of disputed disability from _____, through December 11, 2008. In evidence is a Work Status Report (DWC-73) from the claimant's treating doctor which released the claimant to return to work without restrictions on December 11, 2008. There is sufficient evidence to support the hearing officer's determination that the claimant had disability from _____, through December 11, 2008, and we affirm that portion of the hearing officer's disability determination.

The claimant testified at the CCH that she had not yet returned to work as of the date of the CCH, December 15, 2008. The parties agreed to modify the disability issue at the CCH to define the period of disability as being from _____, through December 11, 2008. Although the claimant testified she had not yet returned to work as of December 15, 2008, she did not dispute that she was released to return to work full duty on December 11, 2008, or testify that she was not able to return to work due to her injury after December 11, 2008. The hearing officer's determination that the claimant had disability after December 11, 2008, through December 15, 2008, the date of the CCH, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse that portion of the hearing officer's determination that the claimant had disability after December 11, 2008, through December 15, 2008, and render a new decision that the claimant did not have disability after December 11, 2008, through the date of the CCH.

We affirm the hearing officer's determination that the claimant was in the course and scope of employment at the time of the claimed injury on _____. We affirm the hearing officer's determination that the claimant sustained a compensable injury on _____. We affirm that portion of the hearing officer's determination that the claimant had disability beginning _____, through December 11, 2008. We reverse that portion of the hearing officer's decision that the claimant had disability after December 11, 2008, through the date of the CCH, and render a new decision that the claimant did not have disability after December 11, 2008, through the date of the CCH.

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

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST #300
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge