

APPEAL NO. 090558  
FILED JUNE 30, 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 March 23, 2009. The hearing officer resolved the disputed issue by deciding that the appellant/cross-respondent (claimant) did have disability from January 27, 2009, and continued through the date of the CCH.

The claimant appealed the beginning date of disability, contending that disability began in August of 2008. The respondent/cross-appellant (self-insured) responded to the claimant's appeal and also submitted its own request for review. The self-insured disputes the disability determination made by the hearing officer, contending that the claimant had no period of disability resulting from the compensable injury of \_\_\_\_\_. The appeal file does not contain a response from the claimant to the self-insured's appeal.

DECISION

Reversed and rendered.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury to her right ankle. The claimant sought medical treatment for her right ankle on the day of the injury. The claimant was released to return to work with restrictions and returned to work for her employer for the remainder of her contract term. In evidence is correspondence from the claimant's employer that states the claimant was no longer employed effective May 31, 2008. The claimant testified that she was paid by her employer until August 16, 2008, and that at that point she began looking for a job through the Texas Workforce Commission (TWC) but has not yet been successful in finding a job.

On \_\_\_\_\_, the claimant was diagnosed with a foot and ankle contusion as well as an ankle sprain and was released to return to work with restrictions including limitations on the number of hours walking and no climbing stairs or ladders. A subsequent Work Status Report (DWC-73) included more restrictions such as no kneeling, squatting, bending, stooping, pushing, pulling, or twisting and requested that the claimant keep her right foot elevated when possible. The medical records indicate that the claimant was placed in a "walking boot." In a medical record dated June 11, 2008, the doctor noted in his assessment that he must consider reflex sympathetic disorder (RSD) as a contributor to the pain. On July 15, 2008, the claimant's treating doctor assessed the claimant as having RSD noting that "a persistence of a hot bone scan at this point is indicative of her clinical findings consistent with [RSD]." There is no evidence that the claimant was released to return to work without restrictions. A letter of medical necessity dated December 12, 2008, stated that the claimant continued to have significant neuropathic right ankle and foot pain. The claimant testified at the CCH that

she still cannot put her full weight on her right foot. DWC-73s after August 16, 2008, continued to show the claimant had restrictions and documentation establishes that the claimant was looking for work on August 19, 2008. There is no evidence that the claimant was released to work full duty.

The claimant had the burden to prove that she has had disability and the time periods of her disability. Section 401.011(16) defines “[d]isability” as “the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage.” Section 410.165(a) provides that the hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. The hearing officer noted in the Background Information portion of his decision that “[b]eginning January 27, 2009, the [c]laimant testified that she looked for work through the [TWC].” The hearing officer determined that the claimant’s disability began on January 27, 2009, and continued through the date of the CCH. The Appeals Panel has held that a light-duty or conditional work release is evidence that disability continues. Appeals Panel Decision 070005, decided February 13, 2007.

We conclude that the hearing officer’s determination that the claimant’s disability began on January 27, 2009, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. As of the date of the CCH, there is no medical record that reflects the claimant is able to return to work without restrictions. We reverse the hearing officer’s decision that the claimant had disability from January 27, 2009, and continued through the date of the CCH and render a new decision that the claimant had disability from August 16, 2008, and continued through the date of the CCH.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JA  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge