

APPEAL NO. 101778
FILED JANUARY 27, 2011

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 October 25, 2010. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) had disability during the period at issue only beginning on March 31, 2010, and continuing through June 18, 2010. The appellant (carrier) appealed, contending that the hearing officer's decision is against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____. The sole issue before the hearing office was: Did the claimant have disability resulting from an injury sustained on _____, from March 31, 2010, through the CCH? The claimant testified that a forklift he was driving in the course and scope of his employment turned over and rolled causing a laceration to his right ear. The claimant sought medical treatment on _____, and medical records in evidence reflect that his ear laceration was treated. The emergency room report dated _____, states that the claimant sustained a laceration to his right earlobe and injured his left index finger and that there were no other injuries. No neck or back tenderness was noted and the range of motion was noted as normal in his neck and back. The claimant was discharged from the hospital on the same date and was given pain medication to take as needed but the report noted that there were to be no refills. The medical record notes the claimant is to return in one week for suture removal. The claimant testified that the hospital was very busy and the doctor did not discuss any work restrictions with the claimant upon his discharge. The claimant testified that he was treating with a chiropractor for a time period after the injury but no records of treatment from the chiropractor were admitted into evidence.

The claimant testified that his employment was terminated on _____. The claimant testified that someone from the employer arrived at the hospital requesting a urine sample for drug testing. The claimant testified that he dropped the cup in which the sample was to be provided, but that he picked it up and provided the sample as requested. The claimant then testified that he was told the specimen was contaminated and was requested to sign paperwork which stated he was refusing to submit to a drug test and was therefore terminated. In evidence was a written statement from the person who administered the drug screen to the claimant. He stated that the claimant dunked the specimen cup in the commode to fill it with water for the specimen and when confronted about the matter, the claimant asked the person administering the test to provide a sample on behalf of the claimant.

The claimant testified that he began looking for work but could not remember if he actually worked for another employer at any time between March 31, 2010, and June 19, 2010, when he began an educational program to be retrained and “better [himself].” 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 pre-injury wage. No evidence of any work restrictions from a doctor treating the claimant were in evidence. Disability can generally be established by the lay testimony of the claimant alone. Although the claimant testified after the injury that he had pain between his neck and shoulder when reaching overhead, he did not contend that the physical injuries sustained on _____, prevented him from returning to work earning wages equivalent to the pre-injury wage. See Appeals Panel Decision 032579, decided November 19, 2003.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence support its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We conclude that the hearing officer’s determination that the claimant had disability beginning on March 31, 2010, and continuing through June 18, 2010, is not supported by sufficient evidence and is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

The hearing officer’s decision that the claimant had disability beginning on March 31, 2010, and continuing through June 18, 2010, is reversed and a new decision is rendered that the claimant did not have disability from March 31, 2010, through 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

**C.T. CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge