

APPEAL NO. 110703
FILED AUGUST 1, 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 April 21, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer.

The hearing officer resolved the sole disputed issue by determining that the appellant/cross-respondent (claimant) had disability from an injury sustained on _____, from September 4, 2010, to November 10, 2010. The claimant appealed the hearing officer's Finding of Fact Nos. 3 and 5 and the Order that the respondent/cross-appellant (carrier) was not liable for the benefits at issue in the CCH. The claimant also responded that the carrier's request for a clerical correction be denied. The carrier submitted a request for a clerical correction but, in the alternative if the clerical correction was denied, cross-appealed the hearing officer's Conclusion of Law No. 3 and decision as inconsistent with the hearing officer's Finding of Fact Nos. 3 and 5 and the Order. The carrier also filed a response to the claimant's appeal, urging affirmance of the claimant's alleged points of error. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Reversed and remanded.

The claimant testified that he injured his right shoulder on _____, while moving a refrigerator at work performing his job duties as a maintenance man for an apartment complex. It was undisputed that the claimant underwent right shoulder surgery and was released to light duty work in August of 2010. While under light-duty restrictions, the claimant worked for the apartment complex earning his pre-injury wage until September 3, 2010. The evidence reflects that on September 3, 2010, the manager of the apartment complex gave the claimant the option of resigning or of being fired due to allegations of sexual misconduct by apartment residents. The claimant testified that he has not worked since September 3, 2010, and that for the period in dispute, September 4, 2010, to November 10, 2010, no doctor has released him to full-duty work.

At the CCH, the claimant alleged that the resident's accusations were false and he was wrongfully terminated by the manager of the apartment complex. The carrier argued that the manager had reasonable grounds to ask the claimant to resign and that the compensable injury of _____, did not cause the claimant's inability to obtain and retain pre-injury wages. Rather the claimant would have earned his pre-injury wages at a job available to him during the disputed period if it had not been for the claimant quitting his job.

The hearing officer's Finding of Fact No. 3 states:

Contrary to [the] [c]laimant's assertions, prior to September 3, 2010, he made unwarranted inappropriate advances to several residents of the apartment complex and the manager had reasonable grounds to ask [the] [c]laimant for his resignation.

The hearing officer's Finding of Fact No. 5 states:

The compensable injury of _____, was not a cause of [the] [c]laimant's inability to obtain and retain employment at wages equivalent to his pre-injury wage beginning on September 4, 2010, and continuing to November 10, 2010.

The hearing officer's Conclusion of Law No. 3 and Decision state:

[The] [c]laimant had disability from an injury sustained on _____, from September 4, 2010, to November 10, 2010.

The hearing officer's Order states:

[The] [c]arrier is not liable for the benefits at issue in this hearing.

We reverse the hearing officer's decision as being internally inconsistent because his Conclusion of Law No. 3 is inconsistent with his Finding of Fact Nos. 3 and 5 and the Order, and remand the case for the hearing officer to make a decision which is consistent and is supported by the evidence. No new evidentiary hearing on remand is necessary.

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 Appeals Panel Decision 060721, decided June 12, 2006.

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

**ROBERT C. SIDONS
BUILDING 1, SUITE 200
11612 RM 2244 (BEE CAVES RD)
AUSTIN, TEXAS 78738.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge