

APPEAL NO. 120191
FILED MARCH 19, 2012

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 29, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) had disability from the compensable injury only for the period of time beginning on August 19, 2011, and continuing through September 30, 2011, and for no other time during the period in issue, which began on June 1, 2011, and continued to the date of the CCH; and (2) the claimant's average weekly wage (AWW) is \$218.00. The claimant appealed, disputing the hearing officer's disability determination. The claimant argues that she had disability for the entire time period in dispute, June 1, 2011, through the date of the CCH. The respondent (carrier) responded, urging affirmance of the disputed disability determination.

The hearing officer's determination that the claimant's AWW is \$218.00 is not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. The claimant testified that she injured herself when she tripped and fell, landing on her right knee and right hand. Subsequently, her right shoulder also began hurting. Approximately a month after her injury, the claimant sought medical treatment due to lingering pain in her right index finger and right shoulder. The claimant testified that the medical provider she saw performed x-rays and concluded she had no broken bones but the medical records from this visit are not in evidence. The claimant testified that she continued working and that her employer allowed her to work modified duty.

The claimant went to [medical center] on August 19, 2011, and was given a clinical impression of a ligamentous sprain of the right shoulder and right finger. That portion of the hearing officer's determination that the claimant had disability beginning on August 19, 2011, is supported by sufficient evidence and is affirmed. The claimant testified that she quit working for employer on August 20, 2011, and that she has not worked since that date. The claimant testified she quit working for employer to accept a job that would provide a higher wage and more hours per week as the number of hours she had been working for employer were decreasing. Additionally, the claimant testified

she did not begin working for the new employer because her prospective employer then decided he could not hire her due to her compensable injury.

The hearing officer found that the claimant's only documented medical treatment records from a doctor were for three visits, on August 19, 2011; August 26, 2011; and on September 30, 2011. We note that in evidence are physical therapy notes for various dates in October of 2011, and that the claimant underwent an MRI of her right shoulder on September 2, 2011. The hearing officer additionally found that the claimant obtained two Work Status Reports (DWC-73) which placed her on restricted duty work beginning on August 26, 2011, and continuing through September 30, 2011. However, neither of the DWC-73s in evidence have an ending date of September 30, 2011.

The hearing officer correctly noted in the Background Information portion of his decision that the claimant was given two DWC-73s that took her off work with lifting restrictions for the period of time beginning on August 26, 2011, and extending through October 21, 2011. In evidence is a DWC-73 dated August 26, 2011, which returns the claimant to work with lifting restrictions of no overhead reaching and limited pushing and pulling in effect from August 26 through September 23, 2011. A second DWC-73 dated September 30, 2011, in evidence continues the same restrictions from September 30 through October 21, 2011.

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. Appeals Panel Decision (APD) 032767, decided December 9, 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 supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). There is no evidence in the record to support September 30, 2011, as the ending date of disability.

The hearing officer erred in determining that the claimant's disability ended on September 30, 2011, 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's disability ended on September 30, 2011, and remand the disability issue 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge